



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Criminal Miscellaneous Application 37 of 2009**

STEPHEN MUCHORA KAGURE ..... APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

**RULING**

By the Originating Summons dated 6<sup>th</sup> November 2009 and filed in court on the same date the Applicant herein **STEPHEN MUCHORA KAGURE** seeks the declaration of this High Court that his continued trial at Voi Law Courts vide case No. 93 of 2009 is null and void and that case violates his Constitutional Rights as guaranteed by S. 77(1) Constitution of Kenya. The said S. 77(1) Constitution of Kenya provides that:-

***“77(1) If a person is charged with a criminal offence then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”***

Mr. Mwaweso counsel for the Applicant argues that the criminal case with which the Applicant has been charged also forms the basis of the transaction in High Court Civil Suit No. 252 of 2008 wherein the Applicant is a Defendant. As Mr. Monda learned State Counsel has pointed out a transaction may quite conceivably form the basis of criminal charges as well as a civil suit. The fact that the Applicant was arrested by the police four years after the said transaction occurred cannot be evidence of a violation of his constitutional rights as there is no statute of limitations affecting criminal cases. The Applicant was arrested on 22<sup>nd</sup> January 2009 and arraigned in court on 23<sup>rd</sup> January 2009 a fact which he does not dispute. He was therefore brought to court within the time limit provided by the Constitution. The hearing of the criminal case was due to commence at Voi Law Courts on 16<sup>th</sup> December 2009. Taking into account the very heavy case load of courts in Kenya, this in my view was reasonable and cannot be said to be evidence of a violation of the Applicant's right to a fair trial. I have read and given due consideration to the Applicant's affidavit dated 6<sup>th</sup> November 2009 as well as the submissions of learned defence counsel. In my view to rule on the issues raised would be tantamount to prejudging the criminal case. This court does not have the benefit of evidence of facts adduced on the matter and thus is in no position to make such a decision. The fact that the Applicant is involved in both a civil suit and a criminal case does not ipso facto amount to a violation of his constitutional rights. The upshot is that I find no merit in the present application and the same is dismissed in its entirety.

**Dated and Delivered at Mombasa this 15<sup>th</sup> day of February 2010.**

**M. ODERO**

**JUDGE**

Read out in open court in the presence of:

Mr. Mwawasi for Applicant

Mr. Monda for Respondent

**M. ODERO**

**JUDGE**

**15/2/2010**