



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI Constitutional Reference 17 of 2009
CHARLES MUTURI CHAURA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to the provisions of *Section 67 (1)* of the Constitution, the subordinate court placed the proceedings relating to NYERI C.M.C.CR. CASE NO. 2153 of 2006 to determine whether the constitutional rights of Charles Muturi Chaura, the accused therein, were breached. M/S Lucy Gitari, the learned Chief Magistrate, framed up the issues for the determination by this court.

When the reference came up for hearing, Mr. Wahome Gikonyo, learned advocate for the accused, urged this court to find that the accused's constitutional rights under *Section 72 (3)* of the Constitution were breached. It is said the accused was arrested and kept in Police custody for more than 24 hours before being arraigned before a court of law. Miss Ngalyuka, learned Senior State Counsel, urged this court to dismiss the reference because the delay to take the accused to court was explained in the replying affidavit of Lawrence Njagi, the investigating officer.

I have considered the rival submissions presented by both sides. It is not in dispute that the accused was arrested on 19th May 2006 and held in Police custody until 22nd May 2006 when he was taken for plea before the Chief Magistrate's Court, Nyeri. The accused pleaded not guilty to the offences of Forgery and uttering a document with intent to deceive contrary to *Sections 349* and *357 (b)* of the Penal Code respectively. Under *Section 72 (3)* of the Constitution, the Police are allowed to detain such a suspect for not more than 24 hours. In this case, the accused was held in Police custody from 19th May 2006 and taken to court on 22nd May 2006. He was obviously held in Police custody for more than 24 hours. The prosecution have stated that the date of arrest fell on a weekend hence the accused could not be taken to court on time. The accused did not contest this assertion. I find the explanation given by the prosecution to be plausible. In any case the delay cannot be said to be inordinate so as one can declare that the accused's constitutional rights were blatantly breached. In the case of PAUL MWANGI MURUNGA =VS= REPUBLIC CR. APPEAL NO. 35 OF 2006 (unreported), the Court of Appeal stated *inter alia*:

“So long as the explanation proffered is reasonable and acceptable, no problem would arise. Again the court might well countenance a delay of say one or two days as not being inordinate and leave the matter at that.”

It is therefore obvious that the reference is for dismissal, which I hereby order. Let the case pending before the subordinate court proceed for hearing as scheduled without further delay.

Dated and delivered at Nyeri this 28th day of May 2010.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kingori holding brief Mr. Wahome for the accused. Makura for the state.