



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

Miscellaneous Application 15 of 2010

**WALTER TERI MWALE.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT**

RULING

The Applicant herein has filed this Notice of Motion dated 19th February 2010 seeking the following orders:-

- (a) THAT there be a stay of proceedings in Criminal Case No. 383 of 2006 at the Senior Resident Magistrate Court in Voi, Republic –vs- Walter Teri Mwale pending the hearing and determination of this application.
- (b) THAT the entire proceedings in Criminal Case No. 383 of 2006 at the Senior Resident Magistrate Court in Voi, Republic –vs- Walter Teri Mwale be revoked and nullified and the accused/applicant be released forthwith.
- (c) THAT the cost of this application be in the cause.

The Applicant herein is the accused in case No. 383 of 2006 being heard before the learned Senior Resident Magistrate sitting at Voi Law Courts. In his annexed grounds the Applicant avers that he was arrested by police on 5th April 2006 and was arraigned in court on 7th April 2006. He therefore spent two (2) days in custody. This the Applicant avers violated his right to be brought to court within 24 hours of his arrest, as provided by S. 77(3) Constitution of Kenya. The Applicant was charged with the offence of stealing by clerk. This is a non-capital offence and it is true that the Constitution provides that he be arraigned in court within 24 hours of his arrest. However it is not every delay in bringing an accused to court that would lead to an automatic acquittal. I am persuaded by the decision of the Hon. Justice J.B. Ojwang in the case of **Michael Kimani Kaniaru –vs- Republic Criminal Appeal No. 461 of 2007**, where he held that any violation of the suspects rights by a delay in arraigning the suspect in court is over-ridden by the public interest in having criminal cases tried and determined based on the facts. I further find that a two-day delay cannot be said to be inordinate. The trial before the lower court is at an advanced stage. Eight witnesses have already testified. The courts must do justice to both the accused and the complainant. As such I find no valid grounds upon which the trial before the lower court should be nullified. The Applicant remains at liberty to seek compensation from the State for the delay in bringing him to court. This application is dismissed in its entirety. I direct that the hearing of Criminal Case No. 383/2006 before Voi Law Courts do proceed to its logical conclusion.

Dated and Delivered at Mombasa this 12th day of May 2010.

M. ODERO
JUDGE

Read in open court in the presence of:

Mr. Onserio for State
Applicant in person

M. ODERO
JUDGE
12/05/2010