



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
PETITION NO. 10 OF 2009**

KENNEDY OTIENO 1st PETITIONER
GEORGE KIBATHI GITHANJA 2ND PETITIONER

VERSUS

OCS, ELDORET POLICE STATION RESPONDENT

RULING

This is an application under Section 72 (3) of the Old Constitution of Kenya made on 30th October 2009 stating that the constitutional rights of the applicants to be brought to Court within twenty four (24) hours of arrest for a bailable offence were breached as they were arraigned in court some fourteen (14) days beyond the prescribed time. The petitioners swore supporting affidavits averring therein that they were arrested on the 2nd of May 2008 and were kept in police custody for 14 days before being taken to court to be charged with stealing a motor vehicle which is a bailable offence. They pray that the case against them be terminated and they be discharged because of that breach of their constitutional rights. They relied on the case of **PAUL MWANGI MURUNGA V. R. CRIMINAL APPEAL NO. 35 OF 2006** for that position. Their Counsel Mr. Andambi submitted that no reasons were given for holding the petitioners in police custody for longer than the prescribed time and hence they must be discharged.

Senior Sergeant Githai Muriuki Mbogo one of two investigating officers swore the Replying Affidavit in opposition to the petition. He stated therein that the Petitioners were arrested not on 2nd but on 8th of May 2008 and he produced and marked "GMM.I" an extract from the OB of 8/5/2008 annexed to his affidavit to prove this point. He added that the Petitioners were arrested and booked in as suspects of robbery with violence and as that is not a bailable offence the Petitioners could not be released on bond and the police were required to produce them in court within fourteen (14) days of their arrest which was done as they were arraigned in Court on 16/5/2008. He deponed that it was an error on the charge sheet that the petitioners were arrested on 2/5/2005.

Mr. Kabaka State Counsel for the State opposed the Petition in his submissions saying that there was no breach of constitutional rights.

I have sufficiently considered this application. Section 72 (3) of the Old Constitution of Kenya provided

that a person arrested or detained upon reasonable suspicion of his having committed, or being about to commit a criminal offence and who is not released shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained was brought before Court as soon as is reasonably practicable shall rest upon any person alleging that he was brought to court as soon as it was reasonably practicable to bring him before court. Here the investigating officer has sworn that the Petitioners were arrested on 8th May 2008 on suspicion of having committed the offence of robbery with violence. That offence is not bailable and all the police were required to do was to bring the suspects to Court within fourteen (14) days, the time provided by the Constitution. The suspects were brought to Court on 16/05/2008 and that is a period of nine (9) days from 8th May 2008 when they were arrested. That was within the time stipulated by the law.

The Petitioners, who were represented by Counsel both at their trial and before this Court did not file a further affidavit to controvert the investigating officer's replying affidavit that they were, firstly arrested on 8/5/2008 and secondly, they were suspects of robbery with violence. His such averments then remain unchallenged and I draw the inescapable inference that the Petitioners were arrested on 8/5/2008 as suspects of robbery with violence as appears from the OB extract and hence none of their constitutional rights were breached. The Petitioners, who as stated above, are represented by Counsel will be advised what to do about the charge sheet which reads that they were arrested on 2/5/2008. That will be at the Chief Magistrate's Court where the trial of Criminal Case number 1686 of 2008 is hereby ordered to proceed to hearing.

This petition is for the above reasons found to be without merit and it is dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 30TH DAY OF SEPTEMBER 2010.

P. M. MWILU
JUDGE

In the presence of:-

Petitioners

Kitur holding brief for Andambi Counsel for Petitioners

Kabaka for State

Andrew Omwenga – Court Clerk

P. M. MWILU
JUDGE