

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Constitutional Reference 93 of 2008

JUSTINE NYANGAU MBOYA ..APPLICANT.

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant was charged with stealing by servant contrary to section 281 of the Penal Code. The charge shows that he was arrested on 16th October, 2008 and arraigned in court on 17th October, 2008. However, the applicant said that he was arrested on 15th October, 2008 and arraigned on 18th October, 2008. At the commencement of his crime, the applicant raised a constitutional issue regarding violation of his rights and asked the trial court to refer the matter to this court for determination.

Chief Inspector Kipsaina Serem, the OCS Rioma Police Station swore an affidavit and explained that the applicant was arrested by Administration Police Officers attached to Mosoch A. P. Post on 15th October, 2008. He was handed over to the police on 16th October 2008. The station vehicle was broken down and the police could not escort him to Kisii Law Courts which is about 25 kilometres away until the 17th of October, 2008 when the vehicle was repaired.

From the above explanation given by the police I do not find that there was any breach of the applicant's constitutional rights. The applicant was arrested on 15th October, 2008 by Administration Police and at the earliest opportunity; the police at Rioma escorted the applicant to court. It is unexplained delay in arraigning an accused person before court that amounts to violation of his constitutional rights. In the circumstances, I dismiss applicant's application and order that the case against him proceeds expeditiously.

DATED, SIGNED and DELIVERED at KISII this 31st day of March, 2009.

D. K. MUSINGA.

JUDGE.

Delivered in the open court in the presence of:

1. N/A for the Applicant.
2. Mr. Mutai for the Republic.

D. K. MUSINGA.

JUDGE.