



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

**CONSTITUTIONAL REFERENCE 28 OF 2008**

**LUCAS MOTANYA NYANDWARO ..... APPLICANT**

**VERSUS**

**STATE ..... RESPONDENT**

**RULING**

The applicant was charged with defilement of a girl contrary to **section 145(1)** of the **Penal Code**. The said offence was alleged to have been committed on diverse dates between April 2001 and October 2002. In the course of his trial, the applicant raised an issue relating to alleged contravention of his fundamental rights and freedom as provided under **section 72(3)** and **(5)** of the Constitution of Kenya. He contended that on 21<sup>st</sup> June 2007 there was a report carried by the Kenya Television Network (KTN) concerning the aforesaid case which identified him and painted him very negatively. He urged the court to determine whether the said episode amounted to infringement of his constitutional right of a fair trial.

During the hearing of the application the applicant was unrepresented. He did not adduce any evidence regarding the report that he was complaining about.

He merely stated that the aforesaid television station reported about the case and as a result he had reasonable apprehension that he could not get a fair trial.

**Mr. Kemo, Senior Principal State Counsel** submitted that the applicant's application was unsubstantiated. He added that if it was true that KTN had reported about the case neither, the police nor the Government of Kenya was liable in any way. He added that there was no evidence that such a report, if at all it was ever made, was likely to prejudice the applicant's fair trial.

I agree with Mr. Kemo that this application is lacking in substance and merit. The applicant did not adduce any evidence to show that the alleged television coverage prejudiced his constitutional right to a fair trial as guaranteed by **section 77(1)** of the **Constitution**. The media has a duty to report about court matters provided that such reports are fair and accurate. It was not made clear to the court whether the alleged report was biased, exaggerated or in any other way prejudicial to the applicant or calculated to cause the applicant get an unfair trial. In the circumstances I find this application lacking in merit and dismiss the same. The applicant's trial before subordinate should proceed expeditiously.

**DATED, SIGNED and DELIVERED** at Kisii this **30<sup>th</sup>** day of **March**, 2009.

D. MUSINGA

**JUDGE.**

Delivered in the open court in the presence of:

Mobisa - cc

N/A for the Petitioners

Mr. Kemo, Senior Principal State Counsel for the Republic.

**D. MUSINGA.**

JUDGE