

WILLIAM ONDIEKI NYAKUNDI APPLICANT

VERSUS

STATE RESPONDENT

RULING:

The applicant was charged with burglary contrary to **Section 304 (2)** and stealing contrary to **Section 279 (b)** of the **Penal code**.

It was alleged that on the 8th day of March, 2008 at Matutu Sub-location, Masaba District, the appellant broke and entered a dwelling house belonging to Lilian Chebet Mogaka with intent to steal therein and did steal one radio valued at Kshs. 800/= the property of the said Lilian Chebet Mogaka.

The charge sheet showed applicant was arrested on 16th March, 2008 and arraigned in court on 18th March, 2008. Before the trial commenced, the applicant alleged that his constitutional right had been violated in that he was held in police custody for longer than 24 hours before he was taken to court. The trial court then referred the matter to this court for determination.

Sergeant Monika Kimani, the **Investigating officer** filed an affidavit and stated that the applicant was arrested on 13th March, 2008 by Administration police officers and handed over to Keroka Police Station for Investigations. He was placed in cells at 3.20 p.m. On 14th March, 2008 the last witness recorded her statement. The Investigating officer explained that the delay in having the accused arraigned in court was due to the fact that it took time to trace the witnesses who are residents of Matutu about 30 kilometres from Keroka police station. She added that 15th and 16th March, 2008 was a weekend. But she did not explain why the applicant was not arraigned in court on 17th March, 2008.

Having considered the above explanation, I find that the police did not sufficiently explain why they did not arraign the applicant in court immediately after the last witness recorded her statement. The Investigating Officer did not explain why the applicant could not be released on bond. She did not also explain why the applicant was not arraigned in court on Monday the 17th day of March, 2008. The applicant was held at Keroka police station and there is a court at Keroka.

I am satisfied that the delay in arraigning the applicant in court amounted to unmitigated violation of his constitutional right. Consequently, the charge against the applicant cannot stand. I allow the application and acquit the applicant of the charges that had been preferred against him. The applicant is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KISII THIS 30TH DAY OF MARCH, 2009.

D. MUSINGA

JUDGE.

30/3/2009

Before D. Musinga, J.

Court: Ruling delivered in open court in the presence of:

Mobisa - cc

Mr. Kemo for state

N/A for Applicant.

D. MUSINGA

JUDGE.