



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

**Constitutional Reference 90 of 2008**

**ANDREW KIPKIRUI BETT ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING:**

The applicant was charged with fraudulent false accounting contrary to **Section 320 (b)** of the **Penal Code**. He also faced eleven other counts of stealing and fraudulent false accounting. The said offences were said to have been committed sometimes between **November 2006** and **July 2007**.

At the commencement of his trial before the subordinate court, the applicant raised a Constitutional issue based on **Section 72 (3)** and **(5)** of the **Constitution**. The trial court formulated the issues for determination and forwarded the application to this court as by law prescribed.

The facts disclosed in the said application are as follows:

- The applicant was arrested on 4/10/07 and was arraigned in court on 11/10/07.
- He was in police custody for nearly 7 days.

Police Constable Wilson Oduor swore an affidavit and stated that:

- The applicant was arrested on 4/10/2007 at about 7.00 p.m. within Nairobi City by Security Officers from the Kenya Commercial Bank where he was working and taken to the Central Police station.
- The case was reported to the Banking fraud Investigation Unit on 5/10/2007.
- The applicant was collected from the Central Police Station by Officers from banking Fraud Investigation Unit for investigations.
- On 8/10/2007 PC Oduor sent an apprehension report to Nairobi Law Courts in respect of the applicant.
- On the same day at about 3.30 p.m. PC Oduor left Nairobi with the applicant for Kisii for further investigations at Kenya Commercial Bank (KCB) Kisii Branch where the applicant was alleged to have committed all the offences at.
- As it was late, the applicant was placed at Sotik Police Station for an over night stay till 9/10/2007.

- On 9/10/2009 they left Sotik and proceeded to Kisii. The applicant was placed at Kisii Police station while P.C. Oduor proceeded to K.C.B. Kisii Branch to carry out investigations.
- P.C. Oduor retrieved relevant documents and recorded statements from witnesses at the bank. The fraud was said to have been committed through the banking system. He continued with investigations until 10.00 p.m.
- 10/10/2007 was a public holiday and the applicant could not be arraigned in court. That was done on the following day.

Under **Section 72 (3) (b)** of the **Constitution**, a person charged with the offences as the ones that were allegedly committed by the applicant should be arraigned in court within 24 hours from the date of his arrest. Where that is not done, the burden of proving that the accused person was taken to court as soon as was reasonably practicable is upon the person who alleges that the provisions of the said subsection were complied with.

While the Constitution has stipulated the time limits within which suspects ought to be arraigned in court, the same document does realize that there are instances when the ideal time limits may not be achieved. That is why it gives an opportunity to the police or other prosecuting authorities to show that they took a suspect to court as soon as was practicably possible.

In **ALBANUS MWASIA MUTUA –VS- REPUBLIC** Criminal Appeal No. 120 of 2004, the Court of Appeal held that unexplained violation of an accused's constitutional right will normally lead to an acquittal. What this court is now called upon to consider is whether the explanation that was advanced by the police through P.C. Oduor is satisfactory.

In this case, the applicant faced a multiplicity of charges. The alleged offences were committed through the banking system. The offences involved falsification of bank records at the KCB Kisii Branch. The applicant was arrested at Nairobi. P.C. Oduor detailed the steps that were taken by the police from the day when the applicant was arrested until the day when he was arraigned in court.

The police required reasonable time to move the applicant from Nairobi to Kisii and to conduct thorough investigations at K.C.B. Kisii branch before arraigning the applicant in court. Given the nature of the alleged offences and the fact that the investigations and recording of statements had to be done at Kisii, I am satisfied that police did their best to arraign the applicant in court as soon as was practicably possible. I hold that the applicant's constitutional rights as aforesaid were not violated. Consequently, I dismiss his constitutional reference and direct that his trial ought to proceed before the subordinate court. These orders will also apply to Constitutional Reference No. 74 of 2008.

**DATED AT KISII THIS 30<sup>TH</sup> DAY OF APRIL, 2009.**

**D. MUSINGA**

**JUDGE.**

**30/4/2009**

Before D Musinga, J.

Mobisa – cc

Mr. Minda for the applicant

Mr. Mutai for the state

**Court:** Ruling delivered in open court on 30<sup>th</sup> April, 2009.

**D. MUSINGA**

**JUDGE.**