



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

Constitutional Reference 17 of 2008

IN THE MATTER OF SECTION 84(3) OF THE CONSTITUTION

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOM UNDER SECTION 72(3) AND (5) OF THE CONSTITUTION OF
KENYA.**

IN THE MATTER OF CRIMINAL CASE NO. 662 OF 2008 KISII CM'S COURT.

BETWEEN

REPUBLIC.....PLAINTIFF

VERSUS

1. DOUGLAS GEKONGE

2. SIMON NYAKUNDI

3. JACOB MANGWANA..... APPLICANTS/ACCUSED

RULING

The applicants were charged with possession of cannabis sativa contrary to **section 3(2)(a) and 4(1)** of the **Narcotic Drugs Psychotropic Substances Control Act No.4 of 1994**. The offence was said to have been committed on the 7th day of April 2008. The applicants were found in possession of four rolls of cannabis sativa valued at about Kshs.40/=.

The applicants were arrested on 7th April 2008 and held in police custody until 9th April 2008 when they were arraigned in court.

Before commencement of their trial, the applicants told the trial court that the delay in arraigning them

before court amounted to violation of the constitutional rights. The learned trial magistrate framed the issues for determination and forwarded the matter to this court.

The police were given the opportunity to explain why there was delay in bringing the applicants to court but they failed to offer any explanation at all.

It is now trite law that that unexplained delay in arraigning accused persons before court amounts to violation of their constitutional right.

Unexplained violation of a constitutional right will normally result in an acquittal irrespective of the nature and strength of the evidence that may be adduced in support of the charge, as was held in **ALBANUS MWASIA MUTUA VS REPUBLIC**, Criminal Appeal No.120 of 2004. In this case the police should have taken the applicants to court within 24 hours of their arrest. Having failed to do so, they were also unable to explain to this court why there was such delay. Consequently, I hold and find that the police violated the applicant's constitutional right and hereby acquit them of the charge that was preferred against them before the trial court. The applicants are set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at KISII this 15th day of May, 2009

D. K. MUSINGA.

JUDGE

Delivered in the open court in the presence of:

1. Mr. Nyambati for Applicants
2. Mr. Mutai for the Republic.

D. K. MUSINGA.

JUDGE.