

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Miscellaneous Criminal Application 61 of 2008

JULIUS WANGO OLARE ----- APPLICANT

V E R S U S

REPUBLIC ----- RESPONDENT

R U L I N G

The Petition before this court is for the Petitioner who seeks orders to the effect that his Constitutional rights as enshrined in the Kenya Constitution specifically Sections 72 (3) and 77 (1) were violated and that this court upon finding that indeed the Petitioner's rights were violated should terminate High Court Criminal Case No. 814 of 2008 and set the Petitioner free forthwith.

Mr. Ondieki, Counsel for the Petitioner, submitted that the Petitioner was arrested on 22/5/08 and arraigned in court on 26/5/08. Counsel submitted that since the Petitioner was charged with a non capital offence, he ought to have been arraigned before the court within 24 hours and that Sections 72 (3) and 77 (1) of the Constitution were contravened. Counsel submitted that 22nd May of 2008 was a Thursday.

The Respondent filed an affidavit by Sergeant Peter Momanyi, who is attached to the Provincial Criminal Investigation Office, Western Province. The officer states that the applicant was arrested on 23rd May 2008 at 3.22 hours on a Friday. The applicant was arrested at Akala Police Station in Nyanza Province and the Police Officer went for him. He arrived with the applicant at Kakamega on 23/5/09 at 5.00 p.m. and this was a Friday. The applicant was arraigned in court on 26/5/09 that was the following Monday.

The accused is charged with the offence of obtaining money by false pretence. The complainant lost Kshs.950,000/=. Mr. Karuri, learned State Counsel, submitted that the offence was committed in Western Province and the accused was arrested on a Thursday in Nyanza Province.

Counsel for the applicant contends that the applicant could have been charged at any court within twenty four hours and thereafter the prosecution could have applied to have the case transferred to the court where the offence was committed.

It is evident in this matter that the applicant was arrested on a Thursday 22/5/09 in Nyanza Province. Police Officers from Kakamega went to collect the applicant on Friday 23/5/09 and charged him on Monday 26/5/09. I do not find that the applicant's rights were infringed. The Investigators of the case had to arrest the applicant, listen to his explanation on the allegations by the complainant and thereafter decide whether a crime had been committed. The Respondent's explanation is quite reasonable. There was no need to have the accused charged in a court in Nyanza Province and thereafter transfer the case to Kakamega Court in Western Province. The delay in arraigning the accused before the court is reasonable. I do find that this application lacks merit and the same is dismissed. The Applicant's rights under Section 72 (3) were not infringed. The case before the trial court should proceed for hearing and final determination.

Delivered, dated and Signed at Kakamega this 28th day of July, 2009.

SAID J. CHITEMBWE

J U D G E