

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Miscellaneous Criminal Application 36 of 2009

CHRISPINUS L. ELONDANGA1ST APPLICANT

JOSPHAT AGOI SAHANI2ND APPLICANT

JULIUS ELONDANGA WINGIRA.....3RD APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

In their application dated 6th April, 2009 the applicants seek orders that the violation of their fundamental Constitutional rights to liberty be determined. The application is brought under *section 84 (1) 72 (3) and 77 (1)* of the Constitution.

The applicants contends that they were arrested on 23rd October, 2005 and were kept in police custody until 8th December 2005 when they were arraigned before court and charged with murder, vide High Court Criminal Case No.39 of 2005. The applicants further contend that their Constitutional rights were violated as they were to be arraigned before the court within fourteen (14) days from the date of arrest and that they should be released as the police contravened the law. They pray that this court “*quashes the charge they are facing and declare the charge a nullity and they be set free forthwith.*”

The State did not respond to the applicants’ contentions by way of replying affidavit. No explanation was given as to the correctness or otherwise of the applicants’ allegations. This being the case, I do find that indeed the applicants were not arraigned before court within 14 days as stipulated by the law. The applicants’ pre-trial Constitutional rights as enshrined in the Constitution were therefore violated.

Having found that the applicants’ Constitutional rights were violated, the next issue is whether the charge facing the applicants should be declared as a nullity and quashed resulting to the acquittal of the applicants. I do not find any provision in the Constitution which specifically states that a victim of violation of pre-trial rights should be acquitted of the charges facing him. Violation of the applicant’s rights does not automatically trigger acquittal. I am aware of the various decisions on this issue of violation of accused persons pre-trial rights but each case has to be determined on its own merit.

The only relevant Constitutional provision on this matter is *section 72 (6)* which allows victims to claim compensation from those persons who violated their rights. I therefore do find that the applicants’ Constitutional rights to be arraigned before court within 14 days from the date of arrest were violated. The applicants are at liberty to claim compensation from the violators of those rights. The application is hereby dismissed. The High Court Criminal Case No. 39 of 2005 shall proceed for hearing. It is so ordered.

Delivered, Dated and Signed at Kakamega this 24th day of September, 2009

SAID J. CHITEMBWE

J U D G E