

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Miscellaneous Criminal Application 5 of 2009

ERICK ISIAHO MUTSOTSO APPLICANT

V E R S U S

REPUBLIC RESPONDENT

R U L I N G

In his application filed on 2nd January, 2009 the applicant seek orders that the violation of his fundamental Constitutional rights to liberty be determined. The application is brought under **section 84 (1)** and **77 (1)** of the Constitution.

The applicant contends that he was arrested on 23rd September, 2006 at Ivatso village, Shinyalu division within Kakamega District. He stayed at the Kakamega Police Station for 4 ½ months until 5th February, 2007 when he was arraigned before court and charged with murder, vide High Court Criminal Case No.3 of 2007. The applicant further contends that his Constitutional rights were violated as he was to be arraigned before the court within fourteen (14) days from the date of arrest and that he should be released as the police contravened the law. He prays that this court *“quashes the charge he is facing and declare them a nullity and he be set free forthwith.”*

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

Having found that the applicant’s Constitutional rights were violated, the next issue is whether the charge facing the applicant should be declared as a nullity and quashed resulting to the acquittal of the applicant. 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 applicant’s Constitutional rights to be arraigned before court within 14 days from the date of arrest were violated. The applicant is at liberty to claim compensation from the violators of those rights. The High Court Criminal Case No. 3 of 2007 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