

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Miscellaneous Criminal Application 8 of 2009

STEPHEN ATIBA OSORE 1ST APPLICANT

RAMATHAN MUKWALI MUSULA2ND APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

In their application dated 30th December, 2008 the applicants seek orders that the violation of their fundamental Constitutional rights to liberty be determined. The application is brought under **section 84 (1) 84 (2) (a)** of the Constitution.

The 1st applicant contends that he was arrested on 16th June, 2008 and charged in court on 3rd July, 2008 at Butere, vide Criminal Case No. 438 of 2008.

The 2nd applicant, Ramathan Mukwali Musula was arrested on 21st December, 2007 and was charged in the Butere Court on 22nd January, 2008, vide Criminal Case No. 31 of 2008. The two cases were later consolidated to be Criminal Case No.1430 of 2008.

The applicants further contend that their Constitutional rights were violated as they were not 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 them 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 applicant’s 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 1st applicant was arrested on 16th May, 2008 and arraigned before the court on 3rd June, 2008. There is a public Holiday in June and the delay cannot be held to be unreasonable. The 2nd applicant was in custody for almost 30 days before he was charged in court.

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 applicant is at liberty to claim compensation from the violators of those rights. The Lower Court Criminal Case No. 1430 of 2008 shall proceed for hearing. The application is hereby dismissed. It is so ordered.

Delivered, Dated and Signed at Kakamega this 23rd day of September, 2009

SAID J. CHITEMBWE

J U D G E