



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

**AT KISII**

**Criminal Case 38 of 2008**

**DICKLACK NCHERERE SAKWA ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The applicant was charged with murder contrary to **section 203** as read with **204** of the **Penal Code**. The particulars of the offence were that on the night of 10<sup>th</sup> and 11<sup>th</sup> August, 2008 at Osupuko village in Transmara District within Rift Valley Province he murdered **Michael Lelinka Muri**.

In the course of the trial, the applicant filed a constitutional reference alleging that his constitutional right to a fair and expeditious trial had been violated in that he was arrested on 21<sup>st</sup> August, 2008 but was not arraigned in court until 29<sup>th</sup> September, 2008.

Mr. Kemo, Senior Principal Prosecution Counsel, swore an affidavit in reply to the applicant's affidavit. His affidavit was partially based on a letter dated 14<sup>th</sup> October, 2009 that was addressed to him by the D.C.I.O. Transmara, Joseph Kioko. Mr. Kemo had written to the D.C.I.O. to furnish him with instructions regarding the delay in arraigning the applicant before court.

The D.C.I.O. explained that the applicant was arrested on 12<sup>th</sup> September, 2008. Investigations were carried out in Transmara and Kisii Districts and on completion the file was forwarded to the Attorney General's Office for advice on 23<sup>rd</sup> September, 2008.

Mr. Kemo stated that he perused the file on 26<sup>th</sup> September, 2008 and formed the opinion that there was sufficient evidence that could sustain a charge of murder. On the same day, which was on a Friday, he wrote to the D.C.I.O. It was the 14<sup>th</sup> day of the applicant's incarceration in police custody. The 27<sup>th</sup> and 28<sup>th</sup> September, 2008 were a Saturday and Sunday respectively and the applicant could only be taken court on 29<sup>th</sup> September, 2008.

From the above explanation, the police investigations lasted 10 days before they forwarded the file to the Attorney General's Office for advice. The Senior Principal Prosecution Counsel was only able to peruse the file on 26<sup>th</sup> September, 2008. I am aware that Mr. Kemo was all alone in the office at that particular time and I do not consider the 2 days' delay when the file remained in his office to be inordinate.

There is no evidence that the applicant was arrested on 21<sup>st</sup> August 2008 and not on 12<sup>th</sup> September, 2008 as stated by the D.C.I.O.

I find no merit in this application and dismiss the same. The state should proceed to call the remaining witnesses.

**DATED, SIGNED AND DELIVERED AT KISII THIS 16<sup>TH</sup> DAY OF DECEMBER, 2009.**

**D. MUSINGA**

**JUDGE.**

**16/12/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Mutai for the state

Mr. Minda HB for Mr. Ayienda for the accused

**Court:** Ruling delivered on the 16<sup>th</sup> December, 2009 in open court.

**D. MUSINGA**

**JUDGE.**