



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Misc.Crim. Appli 102 of 2007**

PETER MWAI WANJAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Originating Notice of Motion dated 30/11/2007 is brought under Section 72 (1), Section 77 Constitution of Kenya and Section 123 Criminal Procedure Act Cap. 75 Laws of Kenya seeks orders:-

1. That the detention of the Applicant for over 24 hours from 27/12/2006 to 5/1/2007 is a contravention of the applicants fundamental rights contrary to section 72 (1) of the constitution and
2. Taking of plea in Criminal Case No. 5 of 2007 is null and void
3. That the continuing of the proceedings in that criminal case is a nullity as a whole and an illegality.
4. That this court be pleased to terminate proceeds in Criminal Case SRM C No.5 of 2007 and that there be an order for costs.

The issue of delay is not denied. There is exhibited a copy of charge sheet which contains first count for conspiracy to defrauding contrary to section 317 Penal Code Count II and Count III obtaining money by false pretences contrary to section 313 Penal Code. He was arrested at 3.05 p.m. on 27/12/2006. The complainant involved another person.

It was intended to freeze applicant's Bank account but the bank demanded an order which was granted by court on 3rd January, 2007 after these procedures the applicant was presented to court on 5/1/2007. The parties made submissions. The applicant was not present in court but there was advocate holding his brief. The state counsel submitted that the delay was adequately explained in the replying affidavit. Section 72 (1) (3) limits the period within which the arrested person shall be brought before the court and any person alleging that the suspect has been brought before court within that period or as is reasonably practicable. It shall be for the person so alleging burden to prove that the provisions of the constitution has been complied with. The remedy of wrongful detention is in damages as provided under section 72 (6) thereof not the termination of proceedings.

Upon hearing submissions of State Counsel, I am convinced that this explanation is reasonable. I therefore do not grant orders sought. The application is dismissed.

Dated this 28th April, 2008.

J. N. KHAMINWA

JUDGE

28/4/2008

Khaminwa- Judge

Njue – Clerk

Mr. Omwega

N/A for Applicant or his advocate.

Read in open court.

J. N. KHAMINWA

JUDGE