

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Misc Crim Appli 54 & 61 of 2008

CHARLES MATHENGE NDENGU.....1ST APPELLANT

FRANCIS MUYA WAKABUTU.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicants who are charged at Molo RM's court with non-capital offences allege in their notices of motion dated 17th and 21st July 2008 respectively that they were detained for periods of more than 24 hours before they were taken to court thus contravening their constitutional rights under **Section 72(3)** of the **Constitution**. They therefore seek the dismissal of the charges in the Molo court for being unconstitutional.

Rule 12 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of The Individual) High Court Practice and Procedure Rules, 2006 requires that applications such as these ones should be brought by way of petitions. That was not done in either of these cases and I therefore agree with Mr. Njogu, learned state counsel, that the applicants' notices of motion are incompetent. I accordingly strike them out.

DATED and delivered at Nakuru this 18th day of September, 2008.

D. K. MARAGA

JUDGE