



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Revision Case 42 of 2008**

**NICHOLAS KANGANGAI MURIUKI .....PLAINTIFF**

**-VERSUS-**

**REPUBLIC .....PROSECUTOR**

**RULING**

By letter dated 23<sup>rd</sup> May, 2008 learned counsel *Mr. Mogeni* sought a revision of a ruling by the Subordinate Court, dated 28<sup>th</sup> April, 2008.

Before the Subordinate Court, counsel had raised the point that there had been a violation of the constitutional rights of the accused, when the police held him beyond the period mentioned in the Constitution, before bringing him to Court.

Counsel, on that occasion, had asked the trial Court to state an issue for determination by the High Court as a Constitutional question.

In the ruling the learned Principal Magistrate thus stated:

“Having considered all issues raised, I find that there is no question...that involves a substantial question of law....”

She dismissed the application.

Today, learned counsel *Mr. Mogeni* has submitted that the substance of the constitutional question belongs to the jurisdiction of the High Court; hence the learned Magistrate should not have dismissed the application. Learned counsel *Mr. Makura* for the respondent is in agreement.

It is the position that the constitutional question, touching on the applicant’s trial rights, is for determination by the High Court, and not the Subordinate Court.

All the subordinate Court could do was to establish the evidentiary aspect of the complainant; but it was for the High Court to determine the *constitutional question*.

Consequently, I hereby set aside the learned Principal Magistrate’s ruling of 28<sup>th</sup> April, 2008 and further order as follows:

1. The applicant shall forthwith – and in any case, *within 14 days* of the date hereof – lodge an application in the High Court on the relevant constitutional question.

2. This matter shall be mentioned before the trial Court on 30<sup>th</sup> October, 2008.

3. If it turns out at the mention of 30<sup>th</sup> October, 2008 that the applicant will not have filed an application in the High Court as aforesaid, then the learned Magistrate shall *give directions for the continued hearing of the criminal case* against the applicant.

4. If the applicant will have filed an application in the High Court, in the terms of Order No.1, then hearings before the learned Magistrate shall remain *in abeyance* until the directions of the High Court are given.

*Orders accordingly.*

DATED and DELIVERED at Nairobi this 9<sup>th</sup> day of October, 2008.

**J B OJWANG**

**JUDGE**

**Coram Ojwang: J.**

**Court Clerk: Huka**

**For the Applicant: Mr. Mogeni**

**For the Respondent: Mr. Makura**