



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

(CORAM: OJWANG J.)

MISC. CRIMINAL APPLICATION NO. 318 OF 2007

MARGARET KIRIMI.....APPLICANT

-AND-

ATTORNEY GENERAL1ST RESPONDENT

THE POLICE COMMISSIONER.....2ND RESPONDENT

RULING

Improper conduct has come to the attention of this Court. The Police were intending to charge the applicant with the offence of theft. The applicant suspected so.

On that basis the Police arrested the applicant, and detained her in custody for **six days** before bringing her to Court.

The offence was bailable. In the circumstances, the law required that the applicant be not held uncharged for more than **24 hours**, or for a longer period only if the police could prove to the Court that it was impracticable to charge her within **24 hours strictly**.

As the Police authorities just detained the applicant, without any explanation, *prima facie* this was an illegal detention; and the applicant challenged it by seeking a writ of *habeas corpus*.

So on **9/5/07**, yesterday I issued *habeas corpus* – requiring that the applicant be produced in Court today **10/5/07** at 9.00 a.m.

Instead of the Police doing as the High Court ordered, they now rushed to charge the applicant before a Magistrate's Court, with the offence of theft. Upon further orders by this Court, the Police have now produced the applicant belatedly – with evidence that the applicant has at last been charged with the offence of theft, before a Magistrate's Court.

Learned counsel **Ms. Gateru** urges that there is now a lawful basis for holding the applicant. She also urges that the applicant is being admitted to bail, and may go free pending the trial, if she raises the bail money.

I hold that the failure by the Police to produce the applicant before the High Court at 9.00 a.m. today **10/5/07** on the ground that they had instead produced her before a Subordinate Court, was illegal conduct. And I want to send out the warning that all persons or authorities who are the subject of High Court orders, must comply with those orders **first** – before resorting to any other course of action; otherwise they will be in contempt of Court and due penalties may be visited upon them.

On the facts of this particular case, I will now direct and order as follows:

1. The criminal case that has been lodged against the applicant shall be disposed of on the basis of priority.
2. The trial Court shall consider and make a ruling, before the trial begins, on whether the 6 days that the applicant was held uncharged, do or do not render the trial itself an illegal trial. This is to be done before plea-taking; and if plea-taking has already taken place, then it be declared a mistrial, for the purpose of complying with this order.
3. A certified copy of these orders shall be availed to the applicant.

4. This matter be listed for mention before the Nairobi Chief Magistrate's Court on **16/5/07**.

Orders accordingly.

DATED at NAIROBI this 10th day of May, 2007.

J.B. OJWANG

JUDGE