

**IN THE HIGH COURT OF KENYA AT
MACHAKOS
HIGH COURT MISC. (CR) APPLICATION NO. 67 OF 2004**

CHARLES MBITHI MWANGANGI::: APPLICANT

VERSUS

REPUBLIC THRO' THE ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

R U L I N G

The applicant moved this court under Section 389 (1) and 2 Criminal Procedure Code, Rules 1, (2), 3 and 7 of Rules made under the Criminal Procedure code seeking orders that directions do issue to the Officer Commanding Police Division (OCPD) Machakos, Commissioner of Police the Hon. The Attorney General Republic of Kenya to appear before this court to show cause why the applicant should not be released forthwith and in the alternative, the court do order that applicant be released on bail and/or his relatives be allowed to access the applicant.

The ground upon which the application was brought are that the applicant was arrested on 4/11/04 from his Thika home after a search. He was taken to Machakos police station on 5/11/04 where he spent the night and was released on the next day to an unknown destination. The applicant's wife Mary Nthenya Mbithi swore an affidavit in support of the application and reiterates the grounds.

Mr O'Mirera the learned state counsel on behalf of the Respondents does concede that the applicant was arrested for suspicion that he was involved in a series of offences committed in Makueni District and that the charges will be preferred against him but for some technicalities like conduct of identification parades and once ready will be arraigned in court.

Though the state counsel contends that he is not required to file an affidavit in response to this application, Rule 5 of the Rules made under Section 389 (2) seem to suggest that affidavits should be filed in duplicate, of which one copy shall be served on the applicant. The state did not file any.

Under the constitution of Kenya Section 72 (3) a person who is detained on suspicion of committing an offence should be brought before a court of law within 24 hours and if suspected of an offence punishable by death shall be brought to court within 14 days. The state counsel concedes that the applicant was arrested one month ago. It is not disclosed whether he will be charged with offences punishable by death but whatever the offence, 14 days have lapsed. It is total abuse of the applicant's constitutional rights. The excuse given by the state counsel identification parades are yet to be conducted is neither here nor there. A period of one month is more than enough and this court does order that the applicant should be produced before the court within 24 hours of this court's ruling or be released on bail. Mention on 10/12/04

Dated, read and delivered at Machakos this 8th day of December 2004.

Read and delivered in the

Presence of

R.V. WENDOH

JUDGE