



Ateya v Inspector General of Police & another (Miscellaneous Application E217 of 2024) [2024] KEHC 8050 (KLR) (Crim) (3 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E217 OF 2024
AM MUTETI, J
JULY 3, 2024**

BETWEEN

DELVIS WERUNGA ATEYA APPELLANT

AND

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The applicant has moved this court *vide* a certificate of urgency seeking among other orders the production of the subject DWA who is said to have been arrested by the police in Mombasa on the 30th May 2024 around Tononoka.
2. The A.G through Ms Batianny Senior state counsel has acknowledged service and seeks time to take instructions in the matter.
3. This court has noted from the Application and the accompanying affidavit that the allegations border an illegal detention of the subject outside the constitutionally prescribed period of 24 hours. The police and the office of the DPP, if at all the arrest was in connection with the commission of any known offence, should have by now determined whether or not to charge the subject.
4. This court considering the issued at hand observes as was stated by the learned honourable Mr. Justice Mohamed Ibrahim(as he then was) in the *Danson Mugunya v Republic* [2016] eKLR that liberty of an individual is precious and must not be curtailed otherwise than in accordance with the law.
5. Counsel for the A.G has not told this court the efforts the office made to take instructions since yesterday when they were served with the application.



6. I do appreciate that whereas the state has every right to be heard, the state must also demonstrate good will in its dealing more so where the liberty of a person is at stake. The nature of *Habeas Corpus* application is that speed is of the essence by all actors.
7. I do not wish to countenance lackadaisical approach in dealing with the subjects' liberty.
8. Ms Batiany should go out of her way and take instructions within the shortest time possible but certainly not within 21 days as she has pleaded. The period prayed for if granted would defeat the purpose of the application.
9. The duty of this court under Articles 20, 23 and 159 of the constitution is to promote the values and principles of our Constitution. The removal of the non bailable category of offences in our Constitutional architecture ushered a new era of liberty to be protected without unnecessary display of lethargy by all justice actors, especially so, where one is held for such a long unexplained period. The arrest allegedly was way back in May 2024. It cannot be the business of the state to hold people endlessly without bringing them to court. It is a practice that must be frowned upon by all law abiding citizens.
10. I decline to grant counsel for the Respondent the 21 days sought and order that:-
11.
 - i. the Respondent shall ensure that the subject is produced before this court on 5th July 2024 at 9.00 a.m either virtually or physically.
 - ii. that in the alternative the 1st Respondent through counsel to appear before court and explain why the subject has so far not been released from custody or produced before any court.
 - iii. the Respondents are to be represented by the Attorney General's counsel for there is no matter pending in any criminal court so far to invite the participation of the DPP.
 - iv. Mention on 5th July 2024 for further orders.

It is so ordered.

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 3rd day of July 2024.

HON. A.M MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Mr. Chebii holding brief Attorney General for the Respondents

Mr. Muyundo for the Applicant

