



**Mwangangi v Republic (Criminal Revision E261 of 2023)
[2023] KEHC 4033 (KLR) (Crim) (18 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 4033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E261 OF 2023
DR KAVEDZA, J
APRIL 18, 2023**

BETWEEN

GEOFFREY KYALO MWANGANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant vide his notice of motion and certificate of urgency dated April 12, 2023 has sought for a revision of the trial magistrate in Makadara Miscellaneous Criminal Application E344/2023 *Republic v Geoffrey Kyalo* wherein the trial magistrate, upon the application by the state detained the applicant for 10 days to enable the investigating officer to complete investigations against the applicant.
2. According to the state, the applicant is being investigated for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* and possession of US fake currency contrary to section 267(a) of the *Penal Code*. The applicant's counsel, Ms Minoo, has argued that the compelling reasons were demonstrated under article 49 of the *Constitution*. Secondly, that the family of the applicant are ready to stand surety for the applicant and has therefore prayed for bond pending investigations.
3. The state counsel, Ms. Akunja, on the other hand, has argued that the applicant being a police officer has the capacity to interfere with investigations, analysis and determination.
4. The first question for my analysis is whether the law provides for pre charge detention.
5. Secondly, whether the state has demonstrated compelling reasons to warrant the detention of the applicant. Article 49(1)(g) states that an accused person has the right, at the first court appearance, among other things:
 - a. To be charged.



- b. Informed of the reason for the detention continuing or to be released.
6. Clearly, the Constitution provides for detention of a suspect provided that he is informed of the reason for his continued detention.
 7. Secondly section 36A of the Criminal Procedure Code provides that an investigating officer may make an application for pre charge detention supported by an affidavit detailing reasons why a suspect should be detained. Clearly, the law, the Constitution of Kenya as well as section 36A of the Criminal Procedure Code provide for pre charge detention. The application was therefore properly made before the lower court. There was therefore no violation of the rights of the applicant.
 8. However, were compelling reasons demonstrated? It has been subtly conceded by the applicant's counsel that her client is a police officer. Secondly, the offence under investigations is robbery with violence which carries a death sentence.
 9. It is my considered view that the nature of the job of the suspect places him in a position of authority over the witnesses. The probability of interference cannot be said to be imaginary. I have gone through the affidavit and it is deposed that the investigating officer is in possession of the CCTV footage. It is possible to hack or interfere with this evidence.
 10. As indicated above, the applicant being a police officer has the capacity to interfere with civilian witnesses.
 11. From the foregoing, I find that the trial magistrate properly exercised his/her discretion in contending the liberty of the applicant.
 12. Article 24 of the Constitution states that provided that there is justification for limitation of a right and the limitation is reasonable, a court of law can proceed to limit the right to liberty. Further, article 25 of the Constitution stipulates the rights which cannot be limited and the right to liberty is not one of them. For the foregoing reasons therefore, I hold that the number of days granted to the state are reasonable and decline to interfere with the ruling of the trial court. It therefore follows that the notice of motion application dated April 12, 2023 is hereby dismissed for want of merit. Filed closed.

RULING, READ AND DELIVERED AND SEALED ON 18TH DAY OF APRIL, 2023

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DIANA KAVEDZA

JUDGE

In the presence of Ms. Akunja for state.

Ms. Minoos for applicant

Anastacia court assistant

