

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.57 OF 2018

MIGUNA MIGUNA APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

RULING

On 2nd February 2018, this court (Wakiaga J) ordered the Police to release the Applicant on bond pending his appearance before court today. The Inspector General of Police was served with the order on the same day. The Applicant was not released from Police custody. This morning (5th February,2018) this court again, reiterated the order issued by the court on 2nd February2018. It directed that the Applicant be produced before this court by 2.00 p.m. today. This order, sadly, again, has not been complied with. It is apparent that the Inspector General of Police and the Director Criminal Investigation are in contempt of the orders of this court. **Article 49(1)** of the **Constitution** sets out certain non-derogable rights in relation to an arrested person. That right includes the right for an arrested person to be produced in court within 24 hours of his arrest to be charged or in the alternative he be released. **Article 25 (c)** of the **Constitution** declares that the right to fair trial is one of those rights that may not be limited in any way. Another right which cannot be limited is the right not to be subjected or the freedom from torture and cruel, inhuman or degrading treatment or punishment (**Article 25(a)**). From the submission presented before this court, it appears that the Police, in detaining the Applicant, are operating outside the Constitution and the law. In the circumstances therefore, to remedy the situation, this court orders the Inspector General of Police, Mr. Joseph Boinnet and the Director of Criminal Investigations, Mr. George Kinoti to appear before this court personally to show cause why they should not be punished for being in contempt of the order of this court. They are further ordered to personally produce the Applicant, Miguna Miguna before this court so that he can be dealt with in accordance with the law. This appearance shall be made on 6th February 2018 at 9.00 a.m. The Director of Public Prosecution to serve the order of this court. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2018

L. KIMARU

JUDGE