

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 571 OF 2013

BETWEEN

DUNCAN WAMBUA KIMEU.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT

JUDGMENT

1. The matter before the court is an application by an accused in custody facing a robbery with violence contrary to **Section 296(2)** of the Penal Code in Makadara **Criminal Case No. 1445 of 2014**.
2. The applicant states that he was arrested on 23rd January 2011 and detained without trial up to 8th April 2011 for more than 3 ½ months. He states that this is a violation of his constitutional rights under **Article 49(1)(f)** of the Constitution.
3. I called for the subordinate court proceedings and from the charge sheet therein it states that the applicant was remanded at Machakos G K Prison facing a charge being ***Machakos Magistrate's Court Case No 141 of 2011***.
4. The applicant admitted that he had been arrested and charged with stealing in that case and was in lawful custody by the time he was taken to court on the second charge facing him. He admitted that even if he was released in the Makadara case, he would not be free by reason of the Machakos Case.
5. In my view, the applicant was less than candid and it is the duty of the applicant to disclose all material facts that bear on the subject matter.
6. This duty is not lessened merely because the issue is one of violation of Constitutional rights.
7. In the circumstances, the applicant's application filed on 25th September 2012 is dismissed. The original court file shall be returned to Makadara Chief Magistrates Court and the applicant shall appear before the Court on 7th March 2014 for the mention of his case.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 4th March 2014

D.S. MAJANJA

JUDGE