



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Constitutional Reference 73 of 2008

IN THE MATTER OF SECTION 84(3)

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION 72(3) AND (5) OF THE CONSTITUTION OF KENYA**

IN THE MATTER OF CRIMINAL CASE NO.1389/2006 AT NYAMIRA SRM'S COURT.

BETWEEN

JOSHUA MOKUA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant was charged before the Senior Resident Magistrate, Nyamira with robbery contrary to **section 296(1)** of the **Penal Code**. In the course of trial, his counsel **Mr. Momanyi** brought to the attention of the court the fact that his client had been detained before charge for longer than the constitution allowed. He had been arrested on 30/11/06 and charged on 17/12/06, a period of 14 days. The court referred the matter to this court to determine the constitutionality of that detention. The reference was made after the case was adjourned severally to allow for the police to come to make explanation for the delay. They failed to attend or offer explanation. Before this court, **Mr. Kemo**, Senior Principal State Counsel, was equally unable to extract explanation from the police, despite adjournments being granted to him.

Under **section 72(3)(b)** of the **Constitution** a person arrested upon reasonable suspicion of having committed a non-capital offence has to be brought to court as soon as is reasonably practicable, and at any rate within 24 hours of his arrest. It is now settled jurisprudence (**Albanus Mwasia Mutua v. Republic, Criminal Appeal No.120 of 2004 at Nairobi, Gerald Macharia Githuku v. Republic, Criminal**

Appeal No.119 of 2004 at Nairobi, Francis Ogega Mochama v. Republic, HCCRC NO.21 of 2005 at Kisii, etc) that the unexplained violation of this right of a suspect will result in his acquittal, irrespective of the nature and strength of the evidence the state holds or has adduced against him. In instant case, the state has failed to explain the lengthy detention of the Applicant without charge. I find the constitutional right of the Applicant was transgressed. The criminal charge against him is ordered quashed and he is immediately set at liberty unless he is otherwise being lawfully held.

Dated, signed and delivered at Kisii this 7th day of October, 2009

A. O. MUCHELULE

JUDGE

7/10/2009

Before A.O.Muchelule-Judge

Mongare court clerk

Mr. Momanyi for applicant

Mr. Mutai for state

COURT: Ruling in open court .

A.O.MUCHELULE

JUDGE

7/10/2009