

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Miscellaneous Criminal Application 50 of 2009

DAVID OTIENO ODHIAMBO APPLICANT
V E R S U S
REPUBLIC RESPONDENT

R U L I N G

In his application filed on 30th April, 2009 the applicant seek orders that the violation of his fundamental Constitutional rights to liberty be determined. The application is brought under **section 84 (1) 72 (3) (b)** and **77 (1)** of the Constitution.

The applicant contends that he was arrested on Thursday 14th February, 2008 at Mumias. He stayed at the Mumias Police Station from 3rd March, 2008 when he was arraigned before court and charged with murder, vide High Court Criminal Case No.9 of 2008. The applicant further contends that his Constitutional rights were violated as he was to be arraigned before the court within fourteen (14) days from the date of arrest and that he should be released as the police contravened the law. He prays that this court “*quashes the charge he is facing and declare them a nullity and he set free forthwith.*”

The State did not respond to the applicant’s contentions by way of replying affidavit. No explanation was given as to the correctness or otherwise of the applicant’s allegations. This being the case, I do find that indeed the applicant was not arraigned before court within 14 days as stipulated by the law. The applicant’s pre-trial Constitutional rights as enshrined in the Constitution were therefore violated.

Having found that the applicant’s Constitutional rights were violated, the next issue is whether the charge facing the applicant should be declared as a nullity and quashed resulting to the acquittal of the applicant. I do not find any provision in the Constitution which specifically states that a victim of violation of pre-trial rights should be acquitted of the charges facing him. Violation of the applicant’s rights does not automatically trigger acquittal. I am aware of the various decisions on this issue of violation of accused persons pre-trial rights but each case has to be determined on its own merit.

The only relevant Constitutional provision on this matter is **section 72 (6)** which allows victims to claim compensation from those persons who violated their rights. I therefore do find that the applicant’s Constitutional rights to be arraigned before court within 14 days from the date of arrest were violated. The applicant is at liberty to claim compensation from the violators of those rights. The High Court Criminal Case No. 9 of 2008 shall proceed for hearing. This application is dismissed. It is so ordered.

Delivered, Dated and Signed at Kakamega this 5th day November, 2009

SAID J. CHITEMBWE
J U D G E