

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VIHIGA

CRIMINAL MISCELLANEOUS APPLICATION NO E059 OF 2025

**WILLIAM MUSTAPHA SANGARA.....
APPLICANT**

VERSUS

**REPUBLIC.....RESPONDEN
T**

RULING

INTRODUCTION

1. In his Notice of Motion dated 28th October 2025, the Applicant sought for orders that this court revises the decision for his continued detention at Serem Police Station and the warrants on remand to police station dated 28th October 2025 issued by the Trial Court in **Hamisi Miscellaneous Criminal Application No E061 of 2025 Republic vs William Mustapha Sangara** be set aside. He also sought that he be discharged from custody and he be admitted to reasonable bail terms pending his arraignment in court.
2. Otieno Rodgers Asembo, the Applicant's Advocate swore an Affidavit on 28th October 2025 in support of the said application.
3. Through the said advocate, the Applicant herein averred that he was arraigned in court on 28th October 2025 on an offence allegedly committed on 20th October 2025 but was not subjected to plea taking. He stated that instead, the Prosecution and the Directorate of Criminal Investigations (DCI) filed an application seeking that he continues being detained at Serem Police Station till 9th November 2025 pending investigations into the matter.

4. He contended that he was unrepresented at the time and hence, was unable to properly put up a defence in opposition to the application leading to the application being allowed and being remanded at Serem Police Station. He argued that his continued detention until 9th November 2025 was not based on any cogent compelling reasons and was thus a manifest travesty of justice and in contravention of his right to fair trial, to be presumed innocent until proven guilty, to be released on bond on reasonable terms and access to justice.
5. He further contended that the alleged offence was committed on 20th October 2025 and that the Complainant, Police and DCI had had ample time to conduct any purported investigations. He asserted that they had not provided any cogent justification or rationale for not doing so. He was emphatic that his continued detention was a flagrant abuse of the court process and using the criminal justice system as a tool of oppression on innocent, gullible and vulnerable citizens.
6. He urged the court to allow this application in the interest of justice as it was a principle of justice that a person should be presumed innocent until proven guilty and that no punishment should be administered until proven guilty. He argued that his continued detention was a contravention of established rules of natural justice.
7. He asserted that unless this court intervened, his rights to fair trial would be contravened. He added that he had moved the court

without any unreasonable delay, hence no prejudice would be suffered by the Respondent herein.

8. No 101057 PC Christabel Omumalia, Sub County Director of Criminal Investigation, Serem swore a Replying Affidavit on 4th November 2025. The same was filed on 5th November 2025.
9. She averred that she was the Investigating Officer relating to a case of robbery with violence contrary to Section 296(2) of the Penal Code that was reported at Serem Police Station OB 28/20/10/2025 at 2350 hours. She objected to the Applicant's request for release on the grounds that he was connected to the incident and was hence, arrested at Ebushitiji Village on 27th October 2025.
10. She argued that she sought for custodial orders at the Trial Court to detain the Applicant for nine (9) days at Serem Police Station to enable her complete her investigations which included arresting the other suspects, recovering exhibits, conducting an identification parade and recording witness statement. She asserted that the application was allowed and the matter fixed for mention on 10th November 2025 before the court.
11. She pointed out that save for one suspect, six (6) of the suspects including the Applicant herein had been arrested in connection to the offence. She asserted that in the course of her investigations, she established that the Applicant was the one who rode the stolen motorcycle to Kapsabet and sold it to Wilfred Abuyeka who was also in custody. She added that the fire

extinguisher and the motorcycle which were stolen during the robbery incident were recovered from the suspects.

12. She was emphatic that the Applicant was legally held in police custody and that he would be produced before Hamisi Law Courts on 10th November 2021.

13. Notably, the Police had the constitutional and statutory power under Articles 243, 244 and 245 of the Constitution of Kenya, 2010 and Section 58 of the National Police Service Act Cap 84 (Laws of Kenya). However, these powers of arrest were subject to Article 49 of the Constitution of Kenya regarding the rights of an arrested person. Upon arrest, a person could be dealt with in accordance with the provisions of Article 49 (1) (g) and (h) by charging, detention, release and release on bond.

14. The said Article 49 (1) of the Constitution of Kenya states that:-

“(1) An arrested person has the right—

(a) to be informed promptly, in language that the person understands, of—

(i) the reason for the arrest;

(ii) the right to remain silent; and

(iii) the consequences of not remaining silent;

(b) to remain silent;

(c) to communicate with an advocate, and other persons whose assistance is necessary;

(d) not to be compelled to make any confession or admission that could be used in evidence against the person;

(e) to be held separately from persons who are serving a sentence;

(f) to be brought before a court as soon as reasonably possible, but not later than--

(i) twenty-four hours after being arrested; or

(ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;

(g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released
(emphasis court); **and**

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

15. This court had due regard to the case of **Michael Rotich vs Republic [2016]eKLR** where Kimaru J (as he then was), held that the recent trend where a person was arrested and arraigned in court within twenty (24) hours specifically for the prosecution to seek extension of time to continue to detain such person, without any charge or holding charge being preferred against such person, was unconstitutional. The Learned Judge added that the police have no authority, in law, to arrest and detain any person without sufficient grounds and that those grounds could only be sufficient if the police

had *prima facie* evidence which could enable such person to be charged with a disclosed offence.

16. A person's right to liberty should be respected at all times unless there are legal reasons for such person to be deprived of his liberty. The DCI were given nine (9) days to detain the Applicant herein. Article 49(1)(g) of the Constitution of Kenya was clear that it was not mandatory that an accused person take a plea on the day that he or she was arrested. It provided that **at the first court appearance, to be charged or informed of the reason for the detention continuing** (emphasis court). It was evident that the Respondent's Replying Affidavit had disclosed a *prima facie* offence. The chain of events was established leading to the Applicant's arrest. There was possibility of persons in the chain of events absconding once they knew others who were in the same chain had been apprehended. The investigation and ascertainment of how the offence was carried out during the period that had been sought by the Investigating Officer was sufficient reason to detain the Applicant herein.

17. In the premises, this court was not persuaded that the Applicant had been detained unlawfully requiring for the granting of the orders that he had sought as the Constitution of Kenya did not oust the power of the court to detain a person after being presented in court for the first time. Indeed, Article 49(1)(g) of the Constitution of Kenya envisaged a person being detained for longer than twenty-four (24) hours.

DISPOSITION

18. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 28th October 2025 and filed on 30th October 2025 was not merited and the same be and is hereby dismissed.
19. To avoid violation of his fundamental rights, it is hereby directed that the Applicant be charged within seven (7) days from the date of this Ruling failing which he shall be released from custody pending formal charging of any offence, if at all.
20. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **6th** day of **November** 2025

J. KAMAU
JUDGE