



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA Criminal Miscellaneous Application 23 of 2009**

DONALD HASSAN SHARIF APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant herein DONALD HASSAN SHARIF has by way of an oral application sought to have his continued trial declared a nullity on the basis of what he terms a breach of his constitutional rights. The Applicant filed written submissions which he chose to rely on wholly. Mr. Onserio learned State Counsel appeared for the Respondent State and relied entirely on the replying affidavit sworn by No. 62020 CPL. LAWSON SHUMA and filed in court on 10th December 2009.

The Applicant states that he was arrested on 11th April 2007 but was not arraigned before any court until 18th April 2007 a period of seven (7) days which he alleges violated his rights as guaranteed by S. 72(3) Constitution of Kenya. In his replying affidavit Cpl. Shuma does readily concede that the Applicant was indeed arrested on 11th April 2007 at Kaloleni Estate in Voi Town. He does also concede that the Applicant was not brought to court until 18th April 2007. S. 72(3) of the Constitution does provide that suspect must be arraigned before a court as soon as “**reasonably practicable**” to do so. The same section proceeds to provide that –

“the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this sub-section have been complied with”

Therefore the mere fact that a suspect has been arraigned in court beyond the 24 hour period provided for by the Constitution does not entitle him to an automatic acquittal. The burden rests on the police to explain this delay. This has been done by Cpl. Shuma in his replying affidavit. He has explained that several charges were preferred against the Applicant. The Applicant was found in possession of receipt books which needed to be verified. The verification process took time. The police did nevertheless file an apprehension report in respect of the Applicant on 13th April 2007. I am satisfied by this explanation and I find that given the circumstances the Applicant was indeed brought to court as soon as reasonably practicable. I further find that no breach of his fundamental rights were occasioned by that delay. As such I do hereby dismiss in its entirety the present application and order that the hearings of cases against the Applicant do proceed.

Dated and Delivered at Mombasa this 17th day of December 2009.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Monda for State

Applicant in person

M. ODERO

JUDGE

17/12/2009



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