



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII

Criminal Case 38 of 2008

DICKLACK NCHERERE SAKWA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant was charged with murder contrary to **section 203** as read with **204** of the **Penal Code**. The particulars of the offence were that on the night of 10th and 11th August, 2008 at Osupuko village in Transmara District within Rift Valley Province he murdered **Michael Lelinka Muri**.

In the course of the trial, the applicant filed a constitutional reference alleging that his constitutional right to a fair and expeditious trial had been violated in that he was arrested on 21st August, 2008 but was not arraigned in court until 29th September, 2008.

Mr. Kemo, Senior Principal Prosecution Counsel, swore an affidavit in reply to the applicant's affidavit. His affidavit was partially based on a letter dated 14th October, 2009 that was addressed to him by the D.C.I.O. Transmara, Joseph Kioko. Mr. Kemo had written to the D.C.I.O. to furnish him with instructions regarding the delay in arraigning the applicant before court.

The D.C.I.O. explained that the applicant was arrested on 12th September, 2008. Investigations were carried out in Transmara and Kisii Districts and on completion the file was forwarded to the Attorney General's Office for advice on 23rd September, 2008.

Mr. Kemo stated that he perused the file on 26th September, 2008 and formed the opinion that there was sufficient

evidence that could sustain a charge of murder. On the same day, which was on a Friday, he wrote to the D.C.I.O. It was the 14th day of the applicant's incarceration in police custody. The 27th and 28th September, 2008 were a Saturday and Sunday respectively and the applicant could only be taken court on 29th September, 2008.

From the above explanation, the police investigations lasted 10 days before they forwarded the file to the Attorney General's Office for advice. The Senior Principal Prosecution Counsel was only able to peruse the file on 26th September, 2008. I am aware that Mr. Kemo was all alone in the office at that particular time and I do not consider the 2 days' delay when the file remained in his office to be inordinate.

There is no evidence that the applicant was arrested on 21st August 2008 and not on 12th September, 2008 as stated by the D.C.I.O.

I find no merit in this application and dismiss the same. The state should proceed to call the remaining witnesses.

DATED, SIGNED AND DELIVERED AT KISII THIS 16TH DAY OF DECEMBER, 2009.

D. MUSINGA

JUDGE.

16/12/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Mutai for the state

Mr. Minda HB for Mr. Ayienda for the accused

Court: Ruling delivered on the 16th December, 2009 in open court.

D. MUSINGA

JUDGE.



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)