



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

**Criminal Case 28 of 2007**

REPUBLIC ..... ACCUSED

VERSUS

MICHAEL NYAMENGO ..... ACCUSED

**RULING**

The applicant's application dated 28<sup>th</sup> April, 2010 urges this court to make a finding that his constitutional rights were violated because he was arrested on 5<sup>th</sup> February, 2007 but he was not taken to court until 9<sup>th</sup> July, 2007, a period of 144 days. All along he had been remanded at Keroka Police station. Eventually he was charged with murder. The application was brought pursuant to the provisions of, *inter alia*, section 72 (3) (b) of the Constitution.

Mr. Gitonga, State Counsel, told the court that an explanation had been sought from the police as to why there was such inordinate delay but none was given.

It is now trite law that un explained delay in arraigning an accused person in court amounts to violation of his constitutional right and any charge preferred against him in such a situation cannot be sustained. See **ALBANUS MWASIA MUTUA -VS- REPUBLIC**, Criminal Appeal No. 120 of 2004. The delay herein was inordinately long and the police were unable to explain why they were unable to take the applicant to court within the statutory period of 14 days from the date of his arrest or soon thereafter.

In the circumstances, I find that the applicant's constitutional right was violated and proceed to acquit him of the charge of murder that was preferred against him. He is set at liberty forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KISII THIS 13th DAY OF JULY 2010.**

**D. MUSINGA**  
**JUDGE**  
**13/7/2010**

Before D. Musinga, J

Mobisa-cc

Mr. Muturi for the state

Mr. Okenye for the accused

**COURT:** - Ruling delivered in open court on 13<sup>th</sup> July 2010.

D. MUSINGA  
JUDGE