



**Maweu v Republic (Miscellaneous Criminal Application E009 of 2021)
[2022] KEHC 13016 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2021
GMA DULU, J
SEPTEMBER 22, 2022**

BETWEEN

SAMSON KIOKO MAWEU APPLICANT

AND

REPUBLIC RESPONDENT

(From Makindu PMCR Case No. 1188 of 2018)

RULING

1. Before me is a request for review of the Makindu Magistrate’s court ruling delivered on December 16, 2019 disallowing the application by the applicant (accused in the magistrate’s court), in which the applicant sought that the magistrate hearing the case Hon. J. Magori recuse himself, so that the case is heard by another magistrate.
2. The matter has been escalated to this court through a petition, which is in fact an application to this court to set aside the ruling of the trial court declining to recuse itself. No provision of the law has been cited in the petition, but the applicant seeks that the following orders to be granted by this court;
 - i. That the trial magistrate erred in failing to consider the claims of the accused against the arresting officer investigated by the OCS.
 - ii. That the trial magistrate erred by being influenced by the medical report, thus leading to (medical) non-recovery of the appellant (accused).
 - iii. That the magistrate erred in acting mala fides and mis recording important issue (sic) from the appellant.
 - iv. That the trial magistrate erred by challenging the Appellant’s cross-examination.
 - v. That the magistrate erred in not acting in good faith to grant a fair trial.



3. The application was canvassed through filing written submissions, as well as brief oral highlights to the written submission. In this regard, the applicant filed written submissions which I have perused and considered. On the other hand the Assistant Director of Public Prosecutions Mr. Tanui, submitted orally that the trial magistrate in question had now been transferred, and the application has thus now been overtaken by events, as the case will proceed before another magistrate anyway.
4. I have considered the application, documents filed and the submission on both sides.
5. From the record of the proceedings, I note that at one point, the applicant orally asked the trial court, for orders to be taken for medical treatment. The trial court granted the orders as prayed for him to be taken for treatment. There is no record that any request for medical treatment was declined by the court. I find that there was evidence that medical treatment of the applicant was declined by the trial court.
6. I also note from the record that, at one point, the applicant complained that he was mistreated at the police station and that his money was taken by the police. The magistrate ordered that a report be made to court by the OCS. The report was in fact made to court by the police, who denied the allegations of the applicant. When the applicant (accused) insisted that such wrong doing had occurred, the magistrate informed him that he was at liberty to report the matter to IPOA for further action. All this is evidenced by the record. Thus, again it cannot be said that the magistrate omitted to act upon the request of the applicant in this regard.
7. On the complaint of the applicant, that the magistrate interfered with the applicant cross-examination, it is trite that, cross examination has to be relevant on the case at hand. In addition, such cross examination has to be addressed to witnesses, in the dock, and not other persons. Thus when on 26/2/2020 the applicant sought to ask questions to the prosecutor, the magistrate was correct in disallowing him to do so. Also, the magistrate was correct in not allowing the applicant to ask irrelevant personal questions to witnesses, which had no relation to the offence charged. I thus find no wrong doing committed by the trial magistrate in this regard.
8. With respect to the request by the applicant, for recusal of the magistrate, from conducting the case, recusal can only be justified, when there is real possibility of the Presiding Officer of the case being biased, as courts have to guard against parties who want to forum shop, which would be an abuse of court process, and could also be used to delay pending cases. In the present case, the refusal by the magistrate to recuse himself was justified, as no tangible reason for such recusal was raised by the applicant (accused).
9. Further, this court is aware that the trial magistrate, Hon. J. Magori has now been transferred from Makindu Law Courts to another station. Thus the case of the applicant is unlikely to proceed before the same magistrate. The case having not proceeded for some time now due to this application, I will order that the magistrate's case do proceed with speed.
10. Consequently, and for the above reasons, I find no merits in the application and dismiss the same. I order that the Deputy Registrar returns the trial court file to Makindu Court, forthwith and that the criminal trial in Makindu PMCR Case No. 1188 of 2018 do proceed with speed, as the case is an old 2019 matter.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MAKUENI THIS 22ND SEPTEMBER, 2022 IN OPEN COURT.

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George Dulu

Judge

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