

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISCELLEANOUS CRIMINAL CASE NO. E075 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

MERCY ATIENO OTIENORESPONDENT

(Application for sentence revision from the judgment, conviction and sentence in UKWALA SRM'S MAGISTRATES COURT NO. E116 OF 2021 delivered on 6.5.2021 by Hon. C.N. Sindani – Principal Magistrate)

RULING

1. The applicant is Office of Director of Public Prosecution Siaya. By the application dated 3.5.2021 they seek for transfer of Criminal Case No. 116 of 2021 at Ukwala where the Respondent is the accused person, to Siaya Senior Principal Magistrate's Court on account that the complainant in the said case as per the attached charge sheet is Nelly Grace, who is the Prosecution Counsel, Ukwala Law Courts.
2. The grounds upon which the application is grounded are that the Respondent is unlikely to get fair trial as the prosecutor who is the Complainant is well acquainted with the trial Magistrate.
3. The Respondent is not opposed to the application as presented. I have considered the application and the grounds thereof and on that account, I find this application merited.
4. The Prosecutor being the Complainant before the court where she is prosecuting creates an irresistible conclusion that she will be prosecuting her own case in that court where she is domiciled.
5. Accordingly, I grant the prayers sought and order that Ukwala Principal Magistrate's Criminal Court Case Number 116 of 2021 be and is hereby transferred to Siaya Senior Principal Magistrate's Court for hearing and final determination.
6. This order to be extracted and served upon Ukwala Principal Magistrate's Court for compliance forthwith.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF JUNE, 2021

R. E. ABURILI

JUDGE