



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION CASE NO. E002 OF 2020

PAUL KIANIA MBUGUA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

I have considered the submission of the parties herein on this application dated 1.9.2020. The same seeks revision of the ordered of this court transferring the hearing of Criminal Case No. 2106/2019 from the City Court Chief Magistrates Court No. 1 to another court with jurisdiction. The Respondent has filed a preliminary objection in response to this application. Prior to the hearing of the same, the court ruled that to save on time, the Preliminary Objection could be taken up as a response to the application.

From the submissions of learned counsel for the applicant (the accused, this application is based on the following grounds:

- i) THAT order of transfer would be prejudicial to the applicant as the matter is a part-heard and the trial magistrate had already made certain observations in the matter which could be material in the case.
- ii) THAT there are fears of an application to start the trial de novo since it has been declared that investigations are complete.
- iii) THAT the applicant was not given the opportunity to be heard in the initial application.

On the first issue of the prejudice the applicant stands to suffer, this court notes that the proceedings so far recorded by the trial court are already on records including the observations the applicant is alluding to. This will not change should the trial be continued by another judicial officer.

Secondly, on the fears of a fresh trial i.e trial de novo. This can only be done under section 200 of the Criminal Procedure Code. No such application has so far been made. And under the said provision, it is the accused (the applicant) to make the election, not the complainant. And regarding any further investigations, this can only be handled by the trial court, not this court at this stage.

It is clear that there is a dispute on whether the applicant was served as to attend the hearing. It is regrettable that he may not have been served on time or at all. He has now had the opportunity to submit his case.

I have taken into account his submissions. The basis of these 2 applications however remain the same. That the complainant has expressed fears over the trial court, whereas the accused, applicant, has preferred that court. The court considered these 2 positions and finding no prejudice the applicant stands to suffer in case of transfer, made the ordered. I sincerely still see no prejudice he stands to suffer by the case being heard by a different magistrate. I therefore find no merit in this application dated 1.9.2020. the same is accordingly dismissed.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Mr. Miyare:

We intend to appeal. We seek leave and typed proceeding and the ruling.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Kimani:

We do not object.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Ms. Ndombi:

We leave it to the court.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Court:

Leave granted. Certified proceedings to be supplied to applicant upon payment of fees.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020