



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

TRAFFIC MISC. APPLICATION NO.79 OF 2018

LEMUSO CHEPKOROM NAIBEI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The appellant **LEMUSO CHEPKOROM NAIBEI** filed this application brought under **Article 50(1) of the Constitution** and **Section 81 of the Criminal Procedure Code** seeking;

1. That Kimilili Resident Magistrate's Court traffic Case Number 160 of 2018 be withdrawn from the said Court and be transferred to the Chief Magistrate's Court at Bungoma for hearing and final disposal.

The grounds of the application are that;

1. This suit is subject to a traffic offence dispute where the applicant is seeking to defend himself from the charges imputed on him.

2. That it is not possible for the applicant to list the case herein for hearing and final disposal before any Court at the Kimilili Law Court due to his lack of faith in the Judicial Staff thus there being need to transfer this matter to the Chief Magistrate's Court Bungoma for hearing and final disposal.

The application is supported by the supporting affidavit of the applicant sworn on 26.9.2018 reiterating the grounds of the application.

Mr. Oimbo for State filed grounds of opposition stating;

1. That the applicant has not demonstrated how he will not receive a fair hearing.

2. That the applicant has not proven the allegation that the Complainant and the owner of the vehicle in question are police Officers from Kimilili Police Station and friends of Judicial Staff in Kimilili Court.

The main issue in this application is whether the applicant has demonstrated that his rights to fair hearing under Article 50 of the Constitution have been violation or threatened to be violated for this Court to grant the prayers sought.

The rights under Article 50 relate to fair hearing. **Article 50(1)** provides;

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body.”

Fair hearing denotes the concept of presumption of innocent until the contrary is proved; be informed of the charge, adequate time and facilitation to prepare defence prompt disposal of cases, choice of advocate and being present during the hearing.

In this application the applicant is seeking transfer of the traffic case from Kimilili Court to one other Court because the complainant owner of the vehicle involved are police Officers at Kimilili Police Station and therefore friends of Judicial Staff. In an application such as this the applicant must not use generalities on basis of his application. He must prove specific facts pointing to infringement of his rights.

The only complaint which forms the basis of this application is that the complainant is a Police Officer within Kimilili and may be friends with Judicial Officers. He has not shown how the fact that the complainant is a Police Officer in Kimilili will infringe his rights for fair trial

enshrined under Article 50.

I therefore find no basis to grant the prayers sought and dismiss this application and direct that the Kimilili traffic 160/2018 do proceed for hearing and determination in Kimilili Court.

Dated and Delivered at Bungoma this 20th day of February, 2019

S.N. RIECHI

JUDGE