



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISC. CRIMINAL APPLICATION NO. 38 OF 2018**

**PASILIANO MAKAYE LUKUNGU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant herein is facing a charge of obtaining by false pretences at Mumias Law Courts. He has filed an undated application seeking that:-

(1) This court be pleased to make a finding that the accused's rights to be released on bond as provided by article 49 (h) of the Constitution of Kenya were seriously prejudiced.

(2) This court be pleased to order that Mumias file No. 819 of 2010 be transferred to any other subordinate court within the country.

2. The application was supported by the affidavit of the applicant in which he states that he was charged with an offence of obtaining by false pretences. That he was denied bond in the case. That his rights have thereby been violated.

3. The application was opposed by the learned state counsel **Mr. Ng'etich** who stated that the application does not give reasons why the case should be transferred from Mumias Law Courts. That Mumias court has 3 magistrates. That the applicant could have made an application to be heard by any other magistrate at the station. That it will inconvenience the prosecution to present the witnesses to another court. That the applicant was granted bond. The surety withdrew. Therefore that he has the option of getting another surety. That it is not proper to release him on cash bail as he may not turn up.

4. In reply the applicant says that all the three courts at Mumias Law Courts have done his case. That the case started in 2010.

5. I have considered the application. The applicant has indeed not given a good reason why the case should be transferred from Mumias Law Courts. He has not made any application to the magistrate handling the case to recuse herself from the case. There is no evidence that all the three magistrates at Mumias Law Courts have handled his case. The application for the transfer of the case is therefore declined.

6. The applicant was released on bond. His surety withdrew. It is the duty of the applicant to procure another surety. However, there is no reason for the applicant being denied cash bail. That he will not turn up for hearing if released on cash bail is mere speculation. I therefore grant the applicant cash bail of Ksh. 50,000/= in Mumias Criminal Case No. 819 of 2010.

7. The matter to proceed before the current magistrate who is hearing the matter.

Orders accordingly.

**Delivered, dated and signed in open court at Kakamega this 30<sup>th</sup> day of May, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Juma for Respondent/State

Appellant - present

Court Assistant - George