



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPLICATION 342 OF 2017**

**EDWIN MUSAVI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

On the issue of bond, the original record of proceedings clearly shows that the then trial court approved the surety bond on 8/5/2012. A title deed for L.R. No. Kakamega/Mukulusu/332 was consequently deposited in court.

Therefore, unless there are proceedings showing that the bond was cancelled and surety withdrawn, the court takes full responsibility of producing the title deed. Unless by oversight, I have not seen proceedings cancelling the bond or withdrawing the surety, I observe that it is then the duty of the court to explain to the applicant and the surety about the whereabouts of the title deed. In the mean time, if this is the position that obtains, the trial court must find an alternative to securing the release of the applicant.

This must be done upon confirmation by that court that indeed Cr. Case No. 700/2015 (Makadara) was withdrawn under Section 87(a) Criminal Procedure Code.

On the issue of transfer of the case to Milimani Law Courts, I do not see the need to issue the order requested. If the prosecution has already informed the court that witnesses cannot testify afresh due to their non-availability that position will not change by the mere fact of transferring the case to another court. I think the court is on the right track of ordering that the evidence already adduced be adopted. However, pertinent issues may arise if the applicant is convicted particularly as to whether his right to a fair trial was infringed. This is not the forum to address this matter. However, noting that the case is old, the trial magistrate is directed that the trial be heard on a priority basis and on a day to day basis. This will ensure that the applicant's right to a fair hearing is not further violated.

Back to the issue of the bond, I order a mention on 10/4/2018 to confirm that the learned trial magistrate has released the applicant on bond; this relates to the previous bond approved or an alternative to the same. The latter should apply only if the court confirms that the surety was withdrawn or the applicant is facing another criminal charge.

I order that the trial court file be forthwith released to the trial magistrate for mention before him on 27/03/2018 for compliance with the orders issued herein. The learned trial magistrate shall then write to this court on the steps taken pursuant to the orders of this court.

This ruling shall be served upon the learned trial magistrate accordingly.

**DATED AND DELIVERED THIS 12<sup>TH</sup> MARCH, 2018**

**G.W. NGENYE-MACHARIA**

**JUDGE**