

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL CASE NO. 46 OF 2015

[Arising from ruling of C. Menya in Kimilili RM no. 581 of 2012 delivered on 7th April, 2015]

MARTIN SIMIYU MUKHAKHA APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

I have considered the appeal filed before this court. The grounds of appeal are mainly; that evidence before court does not warrant the appellant to be put on his defence as no evidence supports the case and the case be placed before another court for fresh trial reason given at the appeal is that the magistrate was a neighbor of the complainant; further that the evidence before court was false, P3 form was filed by an unqualified person. The court failed to record questions and answers and the appellant is innocent.

The State opposed the appeal for the reason that the appellant was given an opportunity to cross-examine and it is so false for him to state that he did not ask questions. He still has an opportunity to submit. The appeal is an abuse of the court process.

The issue before me is whether or not the court properly exercised its duty in finding that the prosecution had established a prima facie case and therefore placed the appellant on his defence.

In essence what the trial court did was to ask the appellant then the accused to give the court his side of the story based on the evidence by the prosecution. The appellant was aggrieved and in his arguments before this court he feels that the court should have acquitted him as the P3 form was filled by an unqualified person, witness gave false evidence and the court was biased.

I have considered the prosecution evidence and the record generally, I note that the issue of bias was not raised before the trial court nor the issues on the P3 forms. Having said the above, considering the evidence on record I am in agreement with the decision of the trial court and on my part I would have placed the appellant on his defence and therefore see no reason to interfere with the said decision.

I see no reason either to transfer the case to another court although I take judicial notice of the fact that Mr. Sagero is no longer at the station. This appeal was not merited. Justice cuts both ways for the accused and the victims. This matter ought to be heard to its logical conclusion. The file is remitted back to Kimilili for further hearing.

Dated and delivered at Bungoma this 16th day of May, 2016.

ALI-ARONI

JUDGE.