



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**MISC CRIMINAL APPLICATION NO. 71 OF 2016**

A.B.OLABA (ADVOCATE) .....APPLICANT

**VERSUS**

DIRECTOR OF PUBLIC PROSECUTION

(mbs) & 3 OTHERS .....RESPONDENTS

**RULING**

This is a ruling in an application by way of Notice of Motion dated 19<sup>th</sup> July, 2016 and brought under section 81 (1) (d) and (e) of the Criminal Procedure Code.

The application seeks to have Hon. Mr Odenyo, who has since been transferred from Mombasa law Courts to Migori Law courts recalled to Mombasa law courts on suitable days as circumstances may permit to enable him hear to completion the testimonies of the remaining witnesses in Mombasa Inquest No 3 of 2015 and thereafter write and deliver a ruling thereof.

The application is based on the grounds in the application and supporting affidavit of Mr A. B.Olaba, advocate for the Applicants. The grounds are as follows;

- (a) that Hon. Mr Odenyo was hearing the said inquest before being transferred to Migori;
- (b) that fifteen(15) witnesses have so far testified before Hon. Mr Odenyo, the 15<sup>th</sup> witness having testified on 25<sup>th</sup> May 2016 and the matter adjourned to 9<sup>th</sup> June 2016;
- (c) that of the fifteen (15) witnesses, expert testimony was tendered in evidence accompanied by voluminous documentary exhibits produced;
- (d) that the counsel for the applicants (family of the deceased) believes that the testimonies and demeanor of the witnesses who have so far testified, especially two police officers who are suspects in the case, is still fresh in the mind of Hon. Mr Odenyo since he had an opportunity and advantage of hearing and watching them testify before him.

Mr Ayodo holding brief for M/s Fundi did not oppose the application.

I have considered the application by the applicant in light of the provisions of Section 81 (1) (d) and (e) of the Criminal Procedure Code which provides that;

***“Whenever it is made to appear to the High court”.***

(d)that an order under this section will tend the general convenience of the parties or witnesses; or”.

(e)that such an order is expedient for the ends of justice or is required by any provisions of the code;

I appreciate that the cause of action took place in this jurisdiction.

Since there has been no objection to the application, and for purposes of convenience to the parties and consistency in the process, I allowed the same.

I therefore direct that Hon. Mr Odenyo, Senior Principal Magistrate, Migori Law courts be recalled to Mombasa Law courts to hear and finalize inquest No 3 of 2015, being in question to the death of Alexander John Norman Monsoon (Deceased).

The Chief Magistrate, Mombasa Law courts to facilitate/execute the directions.

**RULING, SIGNED AND DATED THIS 30<sup>TH</sup> SEPTEMBER 2016.**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:**

Mr Ayodo for the state

Mr Olaba for Applicant

C/clerk- Kiarie