



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISC. CRIMINAL APPLICATION NO 18 OF 2015**

**IN THE MATTER OF AN APPLICATION FOR CHANGE OF TRIAL VENUE**

**AND**

**IN THE MATTER OF KIGUMO SPM CRIMINAL CASES NOS 32 AND 176 OF 2015**

**(REPUBLIC –VERSUS- PETER KAMAU KIIRU)**

**BETWEEN**

**PETTER KAMAU KIIRU .....APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**R U L I N G**

1. The Applicant appears to be the accused in *Kigumo SPM Criminal Cases Nos 32 and 176 of 2015*. I say “appears” because beyond his say-so, he has not placed before this court any document, not even copies of the charge sheets, to show that indeed he is the accused in those cases.
2. He has applied by **notice of motion dated 05/10/2015 filed on 09/11/2015** for withdrawal of those cases from the Senior Principal Magistrate’s Court, Kigumo and transfer of them to the Chief Magistrate’s Court, Nairobi or to any other court in Kenya for hearing and disposal.
3. At paragraph 2 of his supporting affidavit he has deponed –

**“...I have complaint (sic) against the Acting Senior Principal Magistrate, Kigumo, judicial officers, Kenya Police Service and security guards at the same premises through the reference I made to my letters dated 9<sup>th</sup> June 2015 and 12<sup>th</sup> June 2015”.**

He has not attached copies of those letters; nor has he stated in the rest of his supporting affidavit what his complaint(s) against the trial magistrate(s) is/are.

4. Paragraph 4 of the supporting affidavit discloses a complaint against the office of the **Director of Public Prosecutions**. In paragraph 5 the Applicant wants this court “to order the investigating police station to summon all four (4) witnesses at the required time and date of hearing without fail in Nairobi Law Courts”.

5. Paragraph 6 requires this court

**“to order the arresting officer, Mr. Stanley Limo, Force No 90862 who was attached at Muthithi Police Station to return my money Kshs 16,550/00, phone, shoes, bible and belt which is not recorded in the OB of January 6<sup>th</sup> 2015, and also to be charged with grievous harm as the doctor has filled P3 form and also the witness has recorded statement but the officer commanding station in Muthithi has retained the file so that the officer will not be charged and even harassing witnesses”.**

6. In paragraph 7 of the supporting affidavit the Applicant wants this court to order the **County Criminal Investigating Officer** “to charge Mr. Stanley Limo as per the recommendation made by the DCIO Kangari, Kigumo Sub-County”. He also wants this court, at paragraphs 8 and 9, to order the County Criminal Investigating Officer to stop the harassing of witnesses in the grievous harm case under investigation by Muthithi Police Station, which harassment “was caused by Mr. Limo”.

7. Finally, at paragraph 9 the Applicant wants this court

**“to order the arresting officer (Mr. Limo) and the complainant, one Miss Lidia Wanjiku Njoroge, to return 3,000 pieces of shutters of trees which were stolen during the time of arrest and when released I found nothing on 7<sup>th</sup> January 2015”.**

8. The power of the High Court to change the venue of a criminal trial pending in a subordinate court is provided for in **section 81** of the **Criminal Procedure Code, Cap 75**. An applicant for change of venue must demonstrate –

(a) That a fair and impartial trial cannot be had in any criminal court subordinate to the High Court; or

(b) That some question of law of unusual difficulty is likely to arise; or

(c) That a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or

(d) That an order for change of venue will tend to 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 Criminal Procedure Code.

9. As has already been seen, the Applicant herein has not even attempted to address any of these requirements of the law. He has not set out any specific complaint against the trial magistrate that would tend to show that a fair and impartial trial of his cases cannot be had before the Senior Principal Magistrate at Kigumo, or before any other magistrate there.

10. The Applicant’s complaints are mainly in respect to one police officer who apparently arrested him. Those complaints can be addressed by the officer’s superiors and/or the trial court. The Applicant is also at liberty to approach the **Police Oversight Authority** which is mandated by law to address complaints against police officers.

11. The Applicant’s application for change of venue of his trials is clearly misconceived and in any case without merit. It is hereby dismissed. It is so ordered.

**DATED AND SIGNED AT MURANG’A THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2016**