

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 9 OF 2015

MULATO DARCHE GUBO APPLICANT

V E R S U S

REPUBLIC RESPONDENT

RULING

By the application dated 21/2/2015, Mulato Darche Gubo is seeking to have Marsabit Criminal Case 586/2014 transferred to Isiolo court for hearing and determination and accordingly, that the proceedings in Criminal case 586/2014 be stayed.

The applicant stated that the instant case Criminal Case No. 586/2014 is between him and his wife; and it is in regard to offence of misuse of telecommunication gadget/phone; that there are only two courts in Marsabit and the 2 magistrates have previously presided on Criminal Cases 160/2014, heard by Mr. Ombewa and Criminal Case No. 583/2014 heard by Mr. Wafula; that the 2 magistrates know about his family; that he was aggrieved by the judgments in Criminal Case No. 160/2014 **REPUBLIC V DAHIR MULATO NDIBO AND AISHAHUSSEIN JUMA** and 583/2014 **REPUBLIC V DAHIR MULATO GUBO** and he fears that he will not get a fair and impartial trial.

Mr. Musyoka, State Counsel, did not oppose the application.

I have read the decisions which have been determined by the two courts in Marsabit in Criminal Cases Nos. 160/2014 and 587/2014. The two determined cases and even the instant one involve the relationship between the applicant and his wife. The two determined cases were dismissed. The applicant is the complainant in the two determined cases; he is the accused and complainant is the wife in Criminal Case No. 586/2014. There is no evidence that the magistrates are not independent and will not be impartial. However, sometimes it is all about perception, how does an ordinary man look at it? The applicant is apprehensive that he may not get fair and impartial treatment before the two magistrates and justice must not only be done but be seen to be done.

For that reason, I will agree with the applicant and allow the transfer of Criminal Case No. 586/2014 to Isiolo Chief Magistrate's Court which is the nearest court to Marsabit, for hearing and determination. There will be a mention of Criminal Case 586/2014 at Isiolo Chief Magistrate's court on 16/7/2015 for directions as to the hearing. Accused to appear in Isiolo Court on the said date.

It is so ordered.

DATED AND SIGNED AT MERU THIS 16TH DAY OF JUNE, 2015

R. P. V. WENDO

JUDGE

PRESENT:

Mr. Mulochi for State

Mr. Omari Holding Brief for Ondari for Accused

Faith, Court Assistant

Accused, Present