

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

MISC. CRIMINAL CASE NO. 45 OF 2015

REPUBLIC.....RESPONDENT

V E R S U S

MUTUA MASAU.....ACCUSED

RULING

Mutua Musau who is the accused in Kyuso Senior Resident Magistrates Criminal Case No. 81 of 2015 has asked this court through a letter described as an application, for the transfer of his criminal case to another court for hearing. He listed several grounds in his letter, ranging from denial of bond, denial of witness statements, to bad treatment by the police in the police cells.

His requests were served on the DPPs office Garissa, and Mr. Okemwa appeared in court to respond to the requests.

On 23rd July 2015, the accused and Mr. Okemwa the learned Prosecuting counsel attended court. The accused informed this court that the police were unfair on him because they put

him on handcuffs whenever he was in the cells overnight, sometimes even contrary to the express orders of the court. He also complained that he had been denied prosecution witness statements. He further stated that his items had been retained by the police even when he won a criminal appeal in another case and the appeal court ordered release of the same.

In response Mr. Okemwa stated that the complaints raised by the accused related to the treatment he received from the police, not unfair or biased treatment by the court. Counsel therefore stated that the accused had no justification to seek transfer of the case. The counsel stated that he would inform his colleague in Kyuso to supply the accused with witness statements. Counsel also said that the hearing of the case could be speeded up.

In response to the prosecuting counsel, the accused stated that the trial court sided with the police and that was the reason why it did not grant him bond.

I have considered the complainants of the accused and the submissions of the Prosecuting Counsel.

With regard to bail/bond, in my view if the accused is not satisfied with denial of bail/bond by the trial court, he has a right of appeal. It is not a ground for transfer of the case.

The other reasons given by the accused for transfer of the case relate to treatment by the police and the prosecution. I must state here and clearly that the police are required by law to comply with the orders of the court. If indeed the court ordered that the accused should not be handcuffed, the police have to comply with those orders. If they have any problems complying with the said orders, they should bring up the issue in court through the prosecutor or the Prosecuting counsel. Short of that they should comply with the courts orders.

With regard to the supply of prosecution witness statements, it is a Constitutional requirement that

accused persons be supplied with prosecution witness statements. I therefore order that he be supplied with prosecution witness statements by the police.

With regard to the request for transfer of the case, I find no unfairness or bias on the part of the court, which could justify the transfer of the case under section 81 of the Criminal Procedure Code (cap 75). I thus decline to transfer the case, but order that it be given priority in its hearing and conclusion.

Dated and delivered at Garissa this 28th July 2015.

GEORGE DULU

JUDGE