



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL MISC. APPLICATION NO.9 OF 2015**

**WALTER ORWA MISORI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G.**

1. This Ruling is in respect of the Notice of Motion dated 10<sup>th</sup> June 2015, in which the Applicant is seeking transfer of Kericho C.M. Cr. Case No.2591 of 2014 (Republic Vs. Walter Orwa Misori to Nairobi C.M's Court or any other court within the Republic of Kenya.)
2. He has on the face of the Application raised a number of grounds which are as follows:
  - a. *That he has not been accorded a fair and impartial trial right from the day the applicant was arraigned in Court and during the entire proceedings.*
  - b. *That he has lodged several complaints with the trial Magistrate who has also become equally biased and sided with the prosecution so as to incarcerate me.*
  - c. *That the trial Court has shown open biasness by not recording his numerous complaints about the prosecution witnesses and the manner in which the learned trial Magistrate conducted his Court.*
  - d. *That he is the the one who raised the red flag and the theft of money belonging to Huruma Disable Self Help Group but instead he was locked up without the subject of his complaint being subjected to legal process.*
  - e. *That he has made several visits to the office of senior Principal Prosecution Counsel to investigate why he was arraigned in Court yet he is the complainant.*
  - f. *That he has no faith in the Kericho Chief Magistrate Court as they have failed to intervene and protect his constitutional right to a fair trial within the Kericho Law Courts.*
  - g. *That he is totally apprehensive that he will not be accorded a fair trial so long as Kericho C.M Cr. No.2591 of 2014 remains pending for hearing and determination within the precincts of Kericho Law Courts.*
  - h. *That the constitution guarantees him the protection of his Bill of Rights in a fair trial and in a fair justice system.*
3. He also filed a Supporting Affidavit in which he has simply repeated the grounds.

4. The State filed a Replying Affidavit through M/s Mwangi learned Senior Counsel refuting the claims. She says the several adjournments have been caused by the defence (Applicant).
5. That the Applicant has been demanding for withdrawal of the case by the Respondent and has made several visits to the Respondent's offices with bundles of letters demanding for withdrawal of the case.
6. That the Complaint arose in Kericho and so the court in Nairobi lacks jurisdiction to hear the matter. Another Affidavit referred to as a Replying Affidavit was filed by the Applicant on 31<sup>st</sup> July, 2015. The State went further and filed a Further Replying Affidavit.
7. With all due respect to both the Applicant and Respondent the latter affidavits could not be filed without the leave of the Court. In fact the said affidavits have narrated to this court the evidence of the matter in the Lower Court. This Court is dealing with an application for transfer of the Kericho C.M Cr. Case No.2591 of 2014 and not an appeal of the case in the Lower Court.
8. I therefore expunge from this record the Replying Affidavit sworn on 31<sup>st</sup> July, 2015 and filed on the same date and the Further Replying Affidavit sworn on 27<sup>th</sup> August, 2015 and filed on 31<sup>st</sup> August, 2015.
9. When the Notice of Motion came for hearing the Applicant submitted that he expected to be set free after the learned trial Magistrate allegedly told him in open court that his arrestors were just disturbing him.
10. M/s Mwangi for the State opposed the application and submitted that the Applicant had been placed on his defence in the Criminal Case the subject of this application. She further submitted that if the case is transferred to Nairobi and the same is ordered to start *denovo* the State would not be able to avail witnesses.
11. The original Kericho C.M. Cr. Case No. 2591 of 2014 has now been forwarded to this court. The main reason that made the Applicant to file this application is delay in hearing the matter and perceived bias by the learned trial Magistrate.
12. I have perused the record and can see that the Applicant was first arraigned in Court on 8<sup>th</sup> September, 2014.
  - The 1<sup>st</sup> hearing was on 1<sup>st</sup> October , 2014 but it did not proceed for lack of witnesses.
  - On 16<sup>th</sup> October, 2014 it proceeded to hearing with one witness testifying.
  - On 21<sup>st</sup> October, 2014 the expected witness did not attend court.
  - On 9<sup>th</sup> December, 2014 the witness attended and testified.
  - The hearing was adjourned to 5<sup>th</sup> March, 2015 after the Applicant said 11<sup>th</sup> December, 2014 was not convenient to him.
  - The Prosecution closed its case on 5<sup>th</sup> March, 2015 and the Applicant was placed on his defence on the same day. He then told the court he wanted to appoint an advocate.
  - The matter was next listed for hearing on 16<sup>th</sup> April, 2015.
  - On 16<sup>th</sup> April, 2015 Mr. Mutai came on record for the applicant and applied for an adjournment to enable him to prepare. It was granted.

13.The matter was then fixed for defence hearing on 8<sup>th</sup> June, 2015. On this date Mr. Mutai for the Applicant was not present for the hearing. This is then what the Applicant told the Court;

*“My advocate is coming to Court. He will be late. I pray for time allocation or another date.”*

14.The Court opted to give him another date for the hearing on 11<sup>th</sup> December, 2014. The Prosecution could have closed its case earlier.

- The Applicant in his submissions before this Court said he is unhappy with the learned trial Magistrate for not releasing him yet he was the whistle blower. This can be seen from the bundle of letters of Complaint by the Applicant to the Director of Public Prosecution. The last one is dated 15<sup>th</sup> September, 2015.

15.As the matter was pending hearing the Applicant filed this application on 15<sup>th</sup> June 2015, a week after the adjournment of the case on 8<sup>th</sup> June, 2015.

16.From the record its clear that inspite of the hitches it faced the prosecution managed to have its case heard and closed within five months. In fact, had the Applicant not objected his case could have been finalized. Since this is not an appeal I will not touch on anything to do with the merits of the evidence on record.

17.The Applicant was placed on his defence on 5<sup>th</sup> March, 2015. Upto now his defence has not been taken, and he cannot blame anyone but himself for it.

18.Upon perusal of the entire record and the issues raised by the Applicant as forming the basis of his complaint I do not find the same to have any merit.

19.All that the trial court wants to hear from the Applicant is his side of the story and a judgment is done. He is the one contributing to the unnecessary delays. No basis has been laid to warrant the transfer of this case to any other court let alone Nairobi.

20.It's not in the interest of a fair administration of justice to have the case transferred.

21.The Application is disallowed, with an order that the Applicant and his advocate Mr. Joshua Mutai appear before the trial Court on 4<sup>th</sup> January, 2016 for mention for taking a suitable hearing date on priority basis

- The Deputy Registrar to notify Mr. Mutai of the Mention date.

**DELIVERED, SIGNED AND DATED THIS 9<sup>TH</sup> DAY OF DECEMBER, 2015.**

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**H.I.ONG'UDI**

**JUDGE**