



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Miscellaneous Application 82 of 2012**

**PATRICK WAMBII EKEYA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The application filed on 11-10-2012 by the applicants prays that criminal case No. 962 of 2011 at Winam be transferred to another court of competent jurisdiction. The supporting affidavit of **Patrick Wambii Ekeya** claims that the trial magistrate has shown open biasness and that he is not likely to get any justice.

According to him the trial magistrate has already formed an opinion against him and he has been violent and at some point threw the file at him. The learned state counsel has opposed the same. He argued that the appellant ought to have appealed against this court's ruling dated 26-9-2012.

I have perused the application as well as heard the appellant's oral arguments. This application came two weeks after I delivered a ruling on a similar application on 26-9-2012 vide Miscellaneous Civil Application No. 47 of 2012.

The provisions of section 81 of the Criminal Procedure Act are very clear as to when this court can transfer a criminal case to a different court.

After delivering the ruling on 26-9-2012 as stated above, I do not see any other proceedings of the trial court, instead the applicant chose to file the current application which is similar to that earlier on dismissed.

I do with respect disagree with the applicant. The same proceedings in which I made an earlier ruling are still pending before the lower court. He did not even take time to have the matter heard or determined.

In my humble opinion the applicant is a vexatious litigant. If he was not happy with my earlier ruling he should have filed an appeal. The application herein is not made in good faith but to simply delay the criminal case at the lower court which to say the least is not benefiting the applicant.

In the premises I shall dismiss the said application and order that the matter now pending at the lower court do proceed to its logical conclusion before the same court.

**Dated, signed and delivered at Kisumu this 28<sup>th</sup> day of January, 2013.**

**H.K CHEMITEI  
JUDGE**