



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC. APPLICATION (CRIMINAL) NO. 10 OF 2013
(CMCR. CASE NO. 1447/2011 – EMBU)

MICHAEL KAMAU KIIGE.....APPLICANT/APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This is the undated Notice of Motion filed herein on 29/5/2013 for the following orders.

1. ***The Court to give directions on how the trial Court should proceed under Section 200 of the Criminal Procedure Code.***
2. ***That Court's Ruling delivered on 18/2/2013 be set aside.***

All this relates to Embu Chief Magistrate Criminal Case No. 1447/2011. The application is supported by the affidavit of Michael Kamau Kiige the applicant. The State through the investigation officer filed a replying affidavit sworn on 7/2/2013 in which he says he cannot trace the witnesses who had testified.

When the application came for hearing on 5/9/2013 the applicant said he wanted his case to start *denovo* as witnesses were available. He had even called them using their contact in the witness statements. He also asked the Court to vary his terms of bond as he was unable to raise a surety of Shs.400,000/=.

The State through the learned State Counsel Mr. Wanyonyi submitted that the prosecution had at first thought witnesses were available only to realize later they were not available. This Court directed the investigating officer to get in touch with his witnesses through the contacts in their witness statements and report back to court within 7 days on their availability or otherwise.

At the mention date given, the State indicated that all witnesses were traced and were available save one who was not picking the calls. This is contrary to the information that the prosecution had given to the trial Court and even to this Court. And that being the position, I do not even need to go into the merits and demerits of this application.

The Ruling made on 19/2/2013 by the Senior Principal Magistrate was made based on wrong facts. It is therefore set aside.

1. ***The order of the Court issued on 9/11/2012 to the effect that the case starts denovo remains.***
2. ***There is no evidence of bias by the learned trial Magistrate and I will not therefore transfer the***

case to another Court.

3. *The applicant faces two counts viz*

- *Count 1 – Stealing a motor vehicle valued at Shs.650,000/=.*

- *Count 2 – obtaining money (Shs.420,000/=) by false pretences.*

He was given a cash bail of Shs.300,000/=. The bond terms are hereby varied. He may be released upon executing a bond of Shs.300,000/= with a surety in similar sum. Mention on 25/9/2013 before the trial Court for fixing a hearing date.

DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF SEPTEMBER 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

Ms. Ingahizu for State

Applicant

Njue CC