REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CRIMINAL NO. 179 OF 2012

FRANCIS KABURU :: APPLICANT

V E R S U S

REPUBLIC :: RESPONDENT

R U L I N G

The application dated 17.12.2012 seeks an order that a warrant of arrest issued by the Mumias Court in Criminal Case No. 949 of 2012 be lifted. The applicant also seeks to have the case transferred to another court of competent jurisdiction. The application is supported by the affidavit of Francis Kaburu and clement Okello both sworn on the 17.12.2012.

Mr. Simasi informed the court that he was relying on the application as the same was not opposed by the State by way of replying affidavit. Mr. Okoth, State Counsel, informed the court that they were opposing the application and the applicant has to prove his claim.

I have gone through the record of the trial court as well as a similar Misc. application No. 143 of 2012. In the later application Justice Jaden deliberated on the application and dismissed it. That application was filed on 11.10.2012. The current application seems to have followed immediately after the ruling was delivered on the 6.12.2012. All the allegations raised in the supporting affidavit are not proved by any evidence but are merely intended to smear the character of the presiding magistrate. The applicant herein should undergo the hearing process and wait for the verdict of the court. Filing applications intended to frustrate the hearing of the case will not help the applicant. I do find that the current application lacks merit and there is no reason to transfer the suit from the trial court to any other court.

I do direct that the Magistrate in Mumias Court who is handling this matter should list the case for further hearing and ensure that the same is disposed of as soon as possible. The application dated 17.12.2012 is hereby dismissed. The lower court file to be returned to Mumias court.

DATED AT KAKAMEGA THIS 4TH DAY OF DECEMBER 2013

SAID J. CHITEMBWE

J U D G E