



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL REVISION NO. 334 OF 2011**

**EZEKIEL KARABUI MURIGI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

1. The applicant's Notice of Motion is dated 24<sup>th</sup> October 2011 and is brought under **Section 193, 347(2), 349, 350, 362 and 364(1)** of the Criminal Procedure Code. In the Notice of Motion the applicant, **Ezekiel Karabui Murigi**, prays for orders that the ruling of Hon. Mrs. Nduva Resident magistrate dated 12<sup>th</sup> July 2011, in relation to the hearing of **Traffic case No. 22870 of 2008** before her, be revised or reviewed. Further that the traffic case be listed for hearing before any other magistrate of competent jurisdiction and that the proceedings before the Hon. Mrs. Nduva Resident Magistrate be suspended.

2. The grounds advanced by the applicant are that the Hon. Mrs. Nduva Resident Magistrate raised serious issues of contempt against the advocate of the applicant and the applicant himself hence she might be biased if she proceeded with the case. Further that the Hon. Mrs. Nduva Resident Magistrate was not the trial court before and that the applicant would not receive a fair trial and might be prejudiced since the trial court had already expressed or adjudged the applicant guilty by inferring that he is stopping other intending claimants from filing suits in relation to the traffic case.

3. The lower court record shows that court informed the applicant on 4<sup>th</sup> January 2011 that he had a case to answer and his rights under **Section 211** of the **Criminal Procedure Code** were explained to him. Thereafter the case came up on several occasions that is, 25<sup>th</sup> February 2011, 8<sup>th</sup> March 2011 and 14<sup>th</sup> April 2011 but did not proceed because the applicant's counsel was absent.

4. The Hon. Miss Irura Resident Magistrate who took over the conduct of the trial after the Hon. Mrs. Atambo Resident Magistrate was transferred, was also transferred on the 26<sup>th</sup> April 2011 the applicant applied before court No. I to be allowed to proceed with his defence in the absence of his advocate since the advocate was not availing himself for the trial. The court allowed his application and set down the matter before Hon. Mrs. Nduva on 28<sup>th</sup> April 2011 who was to direct itself under the provisions of **Section 200 Criminal Procedure Code**.

5. On 28<sup>th</sup> April 2011 the applicant did appear before the hon. Mrs. Nduva Resident Magistrate and stated that he wished to proceed with the evidence on record. The learned counsel for the applicant was still absent. The learned trial magistrate set down the case for defence hearing on 12<sup>th</sup> July 2011 giving the appellant three months to prepare his defence.

6. Learned counsel Mr. Kahuthu is on record on 12<sup>th</sup> July 2011 stating that:

***“I have enough faith in this court and the comments that case shall proceed this being a part heard in other court” (sic)***

He thereafter states that he would have problems in proceeding before the Hon. Miss Nduva Resident Magistrate’s court and requests that the matter be referred to court No. 1 for reallocation. He gives no reason for wanting the matter transferred out of the said court. This can however be gleaned from the learned trial magistrate’s ruling on the learned counsel’s application. She states as follows in her ruling:

***“The defence counsel came to court at 11 o’clock and immediately applied for adjournment on the grounds that trial would be unfair in this court which insists matter must proceed as scheduled. In my well...thought findings, I find no injustice and prejudice accused person stands to suffer if matter is tried by this court which is handling it for the first time”***

In her opinion this was learned counsel’s way of applying for an adjournment by force if the court insisted that the case must proceed.

7. I note that by his own admission, learned counsel lost touch with his client before the client was placed on his defence. He resurfaced several months and several adjournments later when the employer of the applicant intervened and called him.

8. Learned counsels submissions in this application appear to throw a whole gamut of allegations at the learned magistrate, in the hope that somewhere in there I shall find something which I can use to stop learned trial magistrate Miss Nduva from proceeding.

9. The issues he raised verbally about **Section 211 Criminal Procedure Code** having not been explained and there being no Kikuyu interpreter do not form part of the grounds in this application.

10. I must agree with the learned state counsel Mr. Muriithi, that it is not easy to fathom what it is the application before me seeks. The **Sections 347, 349 and 350** respectively under which the application has been brought deal with appeal and require that the petition be accompanied by the judgment or order appealed from. It is also not clear from the submissions whether what is sought is for the case to be transferred to another court or a review of the learned trial magistrate’s order that the defence case should proceed.

11. It is a fact that in traffic matters where there have been injuries to persons or vehicular damage, civil claims may follow regardless of whether the drivers are convicted or acquitted in ensuing traffic cases. For the case to remain un-concluded three years from the commencement of the trial, shows that the matter has been delayed. If therefore the learned trial magistrate insisted that the matter must be concluded expeditiously, that cannot be interpreted to indicate prejudice on her part. She should infact be commended. From the record it is the learned counsel for the applicant who has acted in a manner that does not aid his client’s case nor protect the dignity of the court.

12. In sum therefore, I find no merit in the application before me and I dismiss it in its entirety.

**SIGNED DATED and DELIVERED** in open court this 3<sup>rd</sup> day of **May 2012**.

**L. A. ACHODE**

**JUDGE**