



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL MISCELLANEOUS APPLICATION 31 OF 2012

KIPESHA LAWRENT MLONDWA APPLICANT

=VERSUS=

REPUBLIC RESPONDENT

RULING

Before me is the Notice of Motion application brought under Certificate of Urgency by the Applicant **KIPESHA LAWRENT MLONDWA** seeking inter alia the following orders:

- “(a) ***THAT*** this application be certified as urgent and service be dispensed with in the first instance.
- (b) ***THAT*** there be a stay of proceedings in Wundanyi criminal Case No. 133 of 2012 pending the hearing and determination of this application.
- (c) ***THAT*** the Honourable Court be pleased to transfer Wundanyi Criminal Case No. 133 of 2012 to Mombasa Law Courts.
- (d) ***THAT*** costs be in the cause”

MR. AMBWERE Advocate argued the motion on behalf of the Applicant whilst **MR. TANUI** learned State Counsel opposed the same. Prayers (a) and (b) having already been dealt with ex-parte, this court now has to consider prayers (c) and (d). The basis of this application is a criminal case namely Wundanyi Criminal case No. 133/2012 **REPUBLIC –VS- KIPESHA LAWRENT MLONDWA** in which the Applicant is the accused and the complainant is the Principal Magistrate at Taveta Law Courts. In his supporting affidavit the Applicant avers that he is apprehensive that he may not be accorded a fair trial at the Wundanyi Law Courts which administratively falls under the Principal Magistrate at Taveta Law courts. This fact on its own would not have been sufficient to persuade me to consider this application. However certain other factors averred to in the Applicant’s supporting affidavit do raise concern. Firstly it appears clear that the case at Wundanyi is being fast-tracked at the instance of some person or persons. It is not common practice for a criminal matter to be mentioned several times within the same week.

The other matter raising concern is the fact that the court in Wundanyi seemed determined to proceed to hear the matter notwithstanding the fact that the dates given were not convenient to the Applicant's advocate and also notwithstanding the fact that copies of statements had not yet been supplied to the defence lawyer. It is a legal requirement that these statements be supplied to defence counsel **before** the commencement of any trial and failure to ensure that this is done means that an accused person will be denied his rights to a fair trial. On the whole I am satisfied that the Applicant's apprehensions are real. It is an important tenet of law that justice must not only be done but must manifestly be seen to be done. The mere appearance of bias even if no bias actually exists is enough to sour a trial. In order to avoid this I do feel that it is imperative that this trial be conducted in a neutral court such as Mombasa. I therefore allow prayer (c) of this application as prayed. No order as to costs.

Dated and Delivered in Mombasa this 22nd day of June 2012.

M. ODERO

JUDGE

In the presence of:

Mr. Ambwere for Applicant

Mr. Tanui for State