

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION 39 OF 2012

GERALD RUBIA KARANJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant who is charged in Narok Court with:

- i) **stealing** contrary to **Section 275** of the **Penal Code**
- ii) **sabotage** contrary to **Section 343(b)** of the **Penal Code** and

alternatively with **handling stolen property** contrary to **Section 322(2)** of the **Penal Code**

has applied that the case be transferred from Narok court to any other court, for the reasons that on 17th May, 2012 he differed with one of the two magistrates in Narok following the transfer of the trial magistrate. That the magistrate with whom he has disagreed is also trying him in criminal case No.831 of 2010; that since the transfer of the trial magistrate, his trial has stalled yet he has been in remand for one year. The applicant is apprehensive that he will not be accorded a fair hearing at Narok court.

When the applicant appeared before me this morning, he informed the court that following the aforesaid events of 17th May, 2012, he has now been charged with creating disturbance in Bomet Criminal Case No.473 of 2012.

The State did not have a response to the application except noting that the applicant has several cases. The trial in Narok Criminal Case No.743/2011 has not commenced and the court in which it is slated for hearing has been transferred. The magistrate in charge, Mr. W. N. Njage, Chief Magistrate has disqualified himself. Subsequently, when the matter went before him on 17th May, 2012, the record shows that the applicant shouted at him and made allegations of corruption against him. He directed that his trial be conducted before Mrs. Nyakundi, Senior Resident Magistrate on 26th July, 2012.

On the allegations of corruption he directed the DCIO, Narok to conduct investigations and to render a report to him, the Chief Justice and the Chief Registrar. It would appear that having made that order, he made a complaint regarding the behaviour of the applicant before him hence the charges in Bomet court. Presently, there are only two magistrates at Narok court. From the applicant's representations, he is apprehensive that Mr. Nyaga being in-charge of the station, may influence his trial before any other magistrate at the station.

The applicant is entitled to a fair hearing. His apprehension is not without basis in view of the events that followed his exchange with the magistrate in-charge on 17th May, 2012

In the result, I order that Narok Criminal Case No.743 of 2011 and Bomet Criminal Case No.473 of 2012 be transferred for hearing and determination to Naivasha Law Courts.

Dated, signed and Delivered at Nakuru this 20th day of July, 2012.

W. OUKO
JUDGE