

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION 131 OF 2011

ELIUD NJOROGE GITHII.....1ST APPLICANT

GEORGE THAIRU GITAU.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The two applicants together with two others are being tried jointly in Narok P.M. Criminal Case No.749 of 2011 with the offence of **robbery with violence** contrary to **Section 286(2)** of the **Penal Code**.

At the initial stages of the trial (in December, 2011) the applicants asked the trial magistrate to recuse herself claiming that there was an order directing the trial court to disqualify herself and that the applicants had no faith in her. She dismissed the application and found that there was no order barring her from hearing the matter.

It would appear the applicants had applied (in what is clearly a letter) for the transfer of the case claiming that their rights under the Constitution are being violated and that they have not received a fair trial; that the trial court is biased and has put pressure on them to proceed without witnesses' statements; that the court has threatened one of the applicants with imprisonment.

This application was brought before the commencement of the hearing. Subsequently, the applicants have fully and actively participated in the trial. Nine witnesses have been called since they filed this application.

I am unable from the record to see any evidence of bias on the part of the trial magistrate. As a matter of fact, I find that the proceedings have been conducted meticulously and professionally. In addition, the trial magistrate has been transferred from Narok Law Courts. The applicants' apprehension of interference with the proceedings is without any basis.

The application is dismissed. Return the lower court file to Narok Law Courts forthwith.

Dated, Signed and Delivered at Nakuru this 17th day of July, 2012.

W. OUKO

JUDGE