REPUBLIC OF KENYA

High Court at Machakos

Criminal Miscellaneous Application 200 of 2012

REPUBLIC ……..……..……..…… APPLICANT

VERSUS

JACOB NGANDA KALUNDA …….....RESPONDENT

RULING

Court: I have considered the comments and recommendations of the trial court. The fact that a court has convicted somebody does not mean that it is disqualified from hearing another case involving the same person.

A mere allegation of bias by an accused person is also not sufficient reason for a trial court to disqualify itself. Otherwise, litigants will do forum shopping, and also create situations to impede the smooth administration of justice. The reasons for the alleged bias have to be given by the one who is complaining for the court to consider. If the court refuses to disqualify itself, the complainant has the option of referring the matter to the higher court.

In the present case, I do not see any good or sustainable grounds for the allegation of bias. The disqualification by the magistrate is not justified.

I set aside the orders of the trial court disqualifying itself. The case will proceed to trial before the same magistrate, according to the law.

Dated and delivered at Machakos this **18th** day of **December** 2012.

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George Dulu

Judge

Court: Mention before the trial court on 7/1/2013.

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George Dulu

Judge

In the presence of:
Mr Mukofu for State
Mutinda – Court clerk