

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 33 OF 2011

JAMES MAKURA M'ABIRA.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

James Makura M'Abira, the Applicant herein, took out the Notice of Motion dated 11th July 2011, whereof he sought for **Nyeri anti-Corruption Case No. 4 of 2011** to be transferred to Embu Chief Magistrate's Court for hearing and determination. The Motion is supported by the affidavit of the Applicant sworn on 11th July 2011.

When the Motion came up for interpartes hearing, Mr. Kaigai, learned Provincial State Counsel indicated that the State was not opposing the Motion.

I have considered the oral submissions of Mr. Lompo, learned counsel for the Applicant. I have also taken into account the grounds set out on the face of the Motion plus the facts deponed in the affidavit of the Applicant. Basically, the Applicant is saying that he is a familiar face within the Nyeri Law Courts. He has averred that he has severally appeared on behalf of the State before the Chief Magistrate's Court hence he is likely to be embarrassed if his trial is conducted before the same Court.

I have carefully considered the Applicant's application which is premised under Section 81 of Criminal Procedure Code. Under the aforesaid Section, this Court is given wide power to change the venue of trial depending on the circumstances of each case. The Applicant is a Senior State Counsel attached to the offices of the Director of Public Prosecutions, Nyeri. He has on many occasions appeared before this court and before the chief Magistrate's Court. He is a familiar face before this court and the subordinate court. With respect, I agree with the applicant, that his trial may not be handled fairly if he was tried before judicial officers whom he has worked with for some time. In short he will not get a fair and impartial trial. The Applicant appeared before the Chief Magistrate's Court to face a charge of three counts. The 1st and 2nd counts are in respect of a charge of soliciting for a benefit contrary to *Section 39 (3) (c)* as read with *Section 48 (1)* of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. In count III the applicant faces a charge of receiving a benefit contrary to *Section 39 (3) (a)* as read with *Section 48 (1)* of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. There is only one gazetted Anti-Corruption Magistrate in Nyeri. The Applicant's Motion squarely falls within the provisions of *Section 81(1) (a)* of the Criminal procedure code. I hereby order that the venue of the trial of the Applicant herein be changed from Nyeri Chief Magistrate's Court to Embu chief Magistrate's Court. Consequently, **Nyeri Anti-Corruption Case No. 4 of 2011** is withdrawn from the Chief Magistrate's court, Nyeri and transferred to Embu Chief Magistrate's Court for hearing and determination by the gazetted Anti Corruption Magistrate based at Embu. The matter be mentioned before the Embu Chief Magistrate's Court on 10th August 2011 for further orders and directions on the hearing of the case.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE