



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CR MISC NO. 9 OF 2011

REVEREND GODFREY

KAINDIO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant Rev. Godfrey Kaindio has brought an application under section 81 of the Criminal Procedure Code. The substantive application seeks a transfer of Tigania Criminal case NO. 887/2010 from E.W.MULEKA, DM1 Tigania to any other court of a competent jurisdiction. The application is dated 15th June 2011.

The grounds for the application are cited on the face of the motion. In brief the applicant contends that the learned trial magistrate has been impartial, biased and openly unfriendly towards the applicant.

There is a supporting affidavit of even date, sworn by the applicant.

When the application first came before me in chambers I stayed the application and directed the applicant to seek the disqualification of the trial court before the said court. The applicant was to extract the ruling made thereby and cause the application set down for hearing.

I see from the file that subsequently both the applicant and the applicant filed further supporting affidavit in those affidavits, the two demonstrate that the learned trial magistrate did not entertain the application before him as directed by this court instead he set down the case for defence hearing. It is clear from the file that it took the intervention of the Deputy Registrar of this court for the learned trial magistrate to stay the proceedings.

Mr. Musau for the state and Mr. Muriuki for the applicant indicated to the court that the two had agreed that the applicant's case should proceed before any other court in Tigania.

In normal circumstances I require a replying affidavit sworn on the magistrate complained against to be filed before entertaining such an application. That was not necessary in this case as the learned trial magistrate in his actions, has demonstrated without a doubt his vigour to proceed with the trial despite

being notified of directions made by this court.

I am satisfied that the applicant's apprehension that he may not have a fair trial is not without cause. The impression created by the learned trial magistrate's handling of the matter so far is indicative of the learned trial magistrate's mind set not to give a fair hearing to the applicant. The trial court has a duty to enhance assurance to parties before it that it has the unblinded intention and interest to hear them and a deliberate and calculated desire to be fair, impartial and just.

Considering the conduct of the trial court in this matter, that intention is not demonstrated. Neither can it be said the applicant's apprehension is exaggerated I must hasten to add that no party has a right to choose the court in which its matter should be heard. Litigants should respect courts and accord them the honour due to them.

Having considered the above I will allow the applicant's application dated 15th June 2011.

I direct that the Tigania Criminal Case No. 887/201 be heard by any other Magistrate within Tigania Principal Magistrate's court other than Hon Mulewa E.W. District Magistrate 11 (prof).

The applicant should serve this order to the magistrate in charge, Tigania Law Courts on 4th October 2011 when the said case should be mentioned before that court for setting down the case for hearing.

Those are my orders.

Dated signed and delivered at Meru this 22nd September 2011.

LESIIT, J

JUDGE