



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Miscellaneous Criminal Application 9 of 2010**

**FRANCIS KIPKETER KEMEL.....APPLICANT
=VERSUS=**

REPUBLIC.....RESPONDENT

*{An Appeal from the decision of the Principal Magistrate, Hon. G.M. Mutiso in the
Principal Magistrate's Court at Kapsabet – Kapsabet P.M.CR. NO. 2930 of 2006}*

R U L I N G

I. Introduction

1. This Court received written information that a Magistrate at a subordinate Court was conducting two separate Criminal Court case trials. What was unique about the trial is that in one case the accused A person was charged with the offence of

(i) **Threatening to Kill (Contrary to Section**

223(1) of the Penal Code the Complainant B.

2. In the second case the accused B person is charged with the offence of

(ii) **Grievous Harm Contrary to Section 234 of the Penal Code; Incitement
to violence Contrary to Section 96(b) of the Penal Code;** the complainant
being A.

3. The accused B was Complainant B in the first case whilst Complainant A in the second case was accused A in the first case.

4. It therefore means that at one stage, the trial Magistrate had the Complainant as an accused and vice versa. The same touching on the same subject matter.

5. On receiving this report, the State suggested that in one file the Magistrate ought to have disqualified himself of the said case

II. Findings

6. This is most certainly a conflict of interest and an embarrassing situation.

7. Section 80 Criminal Procedure Code gives this Court powers to change the venue of a case where it appears to the High Court:

a). **“That a fair and impartial trial cannot**

be had in any Criminal subordinate

Court thereto”

8. This Court certainly finds that the two trials would not be heard fairly and impartially.

9. This Court hereby orders that the Kapsabet **PMCR 2930/2006** file

Republic =vrs= David Koech alias Ezekiel together with

Kapsabet **PMCR 3150/2006**

Republic =vrs= Francis Kipketer Kemey

Be and is hereby removed transferred from the Courts at Kapsabet and are duly placed before the Chief Magistrate at Eldoret to be allocated separate Magistrates to hear the two (2) trials.

10. This Court further orders that the trial begin

De novo

Dated this 22nd day of April 2010 at Eldoret.

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M.A. ANG'AWA

JUDGE

Advocate

- (i) Mr. Omwenga, an Advocate instructed by the firm of M/s Omwenga & Co.
Advocate for the Applicant – Present
- (ii) A. Oluoch, an Advocate for the State instructed by the Attorney General
for the Respondent