

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Criminal Misc. 114 of 2008

STEPHEN MATHEKA MUSYOKA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. The present Application is dated 19/6/2008 and in it the Applicant, Stephen Matheka seeks the transfer of Criminal **Case No. 2293/06** at Machakos CM's Court from Court No. 4 to any other court and also that he should be supplied with copies of the charge sheet, P3 form and witness statements to enable him prepare his defence to the charges of assault causing actual bodily harm contrary to section 251 of the Penal Code.
2. I disposed of the latter question by ordering that he should be supplied with the P3 form, charge sheet and witness statements as is his right under section 77 of the Constitution. Although my orders in that regard were made on 30/6/2008 by 1/4/2009, the orders had not been complied with because the police file could not be traced.
3. I have now had occasion to hear submissions by the Applicant and learned State Counsel on the issue before me. I have also perused the lower court file and I note that the evidence of PW1, Susan Ndinda Mbune, and PW2 Benedeta Grace Peter Wambua was taken on 22/3/2007 and since then the hearing could not proceed although the Applicant appeared in court on 19/7/2007, 31/10/2007, 13/12/2007, 20/12/2007, 7/2/2008, 7/3/2008, 26/5/2008, 19/6/2008 and 28/1/2009 the hearing could not proceed principally because the prosecution could not trace the police file.
4. It is clear to me that injustice is being occasioned to the Applicant by the adjournments occasioned by the prosecution. However, the trial court was alive to that fact and on 28/1/2009 granted the prosecution the last adjournment but thereafter when the matter was fixed for hearing on 27/2/2009 the learned magistrate was taking mentions at Kamiti Prison. Hearing was fixed for 7/4/2009 but the court file was already in my hands for purposes of this Ruling.
5. Although there is laxity on the part of the prosecution, I deem it necessary not to transfer the file to another court (because that would only cause more delay) but to remit it back to court No. 4 with the following directions;

The matter to be mentioned before that court today and the hearing fixed within 2 weeks of today's date. If the police file and witness statements are not available, the trial court must then take the necessary action and bring the case to a close.
6. Orders accordingly.

Dated and delivered at Machakos this **28th** day of May 2009.

ISAAC LENAOLA

JUDGE