



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA**

**Misc Crim Appli 49 of 2007**

**PATRICK KIBANDA ONZERE ..... APPLICANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

The applicant, **PATRICK KIBANDA ONZERE**, has asked this court to order that his case be transferred from the Senior Resident Magistrate's Court at Vihiga, to any other court of competent jurisdiction. The said case is said to be Criminal Case No.775 of 2006.

It is the applicant's case that not only has the case taken long to be finalized, but also that the delay has been occasioned largely by the unnecessary adjournments which the trial court had been granting.

The applicant complains that whenever he has tried to raise his concerns with the trial court, the said court tells him to follow what the court had to say. The court would then proceed to allocate new dates for the case, without making a note of the applicant's concerns.

As a consequence of the actions of the trial court, the applicant says that his case had been adjourned on not less than eight occasions since April, 2007.

Furthermore, the applicant complains that since the inception of the case only two prosecution witnesses had testified. So far, the prosecution had indicated that they still had five more witnesses.

It is for those reasons that the applicant feels that;

***“the trial court has a hidden agenda in order to deny me justice.”***

Therefore, in order to get justice, the applicant feels that there is need to have his case transferred to any other competent court.

In answer to the application the learned State Counsel has submitted that the mere fact that the case had been adjourned on many occasions was not a ground for transferring the case.

It was the view of the State that the adjournments were based on merit.

In that regard, as the record of the proceedings before the learned trial magistrate were not made available to me, I am not in a position to ascertain whether or not the adjournments were based on merit.

As it is the applicant who wished to persuade the court that there was need to transfer the case, the onus was on him to demonstrate to this court that the adjournments about which he is complaining, were granted without any lawful reason.

It must be emphasized that it is far from sufficient to merely draw the attention of the court to the overall number of adjournments in any given case. The person who asserts that such adjournments were not warranted needs to go further, to demonstrate the grounds upon which the trial court is deemed to have wrongly exercised its discretion when granting the adjournments complained about.

The applicant herein has simply described the adjournments as “*unnecessary*”, without elaborating on his reasons for arriving at that conclusion.

The applicant has also deponed, in his affidavit in support of the application herein, that the trial court had a hidden agenda, in order to deny him justice.

That is a very serious allegation indeed, as it seeks to impugn the integrity of the learned magistrate. Yet the applicant does not appear to appreciate the seriousness of that assertion, for he offers absolutely no material of any kind, to back up the assertion. I therefore find that there are no grounds whatsoever for the contention that the learned trial magistrate has any hidden agenda, as alleged by the applicant.

In the result, I find no merit in the application for the transfer of the case from Vihiga to any other court. The application is therefore dismissed.

However, by a copy of this ruling, I hereby direct the learned trial magistrate to accord appropriate priority to the hearing and determination of the applicant’s case.

By the phrase “*appropriate priority*” I mean that the trial court should strive to hear and determine the case expeditiously, but without overlooking other cases which may be equally deserving, or even more deserving.

It is so ordered.

***Delivered, dated and signed at Kakamega this 5<sup>th</sup> day of May, 2008***

**FRED A. OCHIENG**

**J U D G E**