

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Misc Crim Appli 79 of 2008

LAWRENCE SEBASTIAN LORUNYEI.....1ST APPLICANT

ALBERT LOTINI.....2ND APPLICANT

LOSIKE EWOI.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicants who are, in Maralal SRM Criminal Case No. 157 of 2008, charged with incitement to violence contrary to Section 96(a) of the Penal Code are out on bond granted by this court after they were denied bail in that court. They have come back to this court seeking the transfer of their case from Maralal SRM's court to the PM's court at Nyahururu or any other court for hearing and final disposal. The application is based on the ground that the Senior Resident Magistrate at Maralal is in good working relationship with the Samburu District Security Officers who are the complainants in that case and that having denied them bail in a clearly bailable offence they are apprehensive that they will not get a fair trial before him.

Although the state counsel has not opposed the application I cannot grant it because I find no merit in it. The fact that the Senior Resident Magistrate at Maralal denied the applicant's bail is no basis for the fear that he will not give them a fair trial. He must have, rightly or wrongly, refused them bail on the basis of the material before him. There is nothing on record to show that he is biased against them. Being a senior judicial officer I do not think that anything said during the bail application will have any bearing in the decision he will make on the case itself. Magistrates all over the country sometimes deny Accused persons bail and subsequently hear their cases and decide them on merit. So this ground has no basis.

The allegation that the magistrate is in good working relationship with the Samburu Security Officers is also no basis for transferring the case from him to another court. There is nothing wrong with a magistrate being in good working relationships with people who prosecute or defend cases before him. Infact he will be in problems if he did not have such a relationship. I find no merit in this application and I accordingly dismiss it.

DATED and delivered at Nakuru this 22nd day of September, 2008.

D. K. MARGA

JUDGE