



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

**Crim. Misc. Appli. 47 of 2008**

**REPUBLIC ..... APPLICANT**

**V E R S U S**

**ROBERT ANYANZWA MUKHWANA ..... RESPONDENT**

**RULING**

The application before me was brought by the learned Senior State Counsel, Mr. Daniel Karuri, on behalf of the State.

It is an application for the transfer of Butali SRMC Traffic Case No. 98 of 2007 from Butali to the Chief Magistrate's Court, Kakamega.

Through the said application the state also sought a stay of further proceedings before the court at Butali, pending the determination of the application for the transfer of the case.

The application is premised on the contention that serious allegations have been made against the learned magistrate at the Butali court, so that it would not be in the interest of justice for both the complainant and the accused, to have the case heard by the said magistrate.

However, the accused did tell this court that neither he nor his advocate had any problem with the case being heard at Butali.

In effect, the accused person, who is the respondent herein, did not share the views of the state, as regards the capacity of the learned magistrate to carry out his responsibilities in accordance with the law and justice.

There is no dispute about the fact that the prosecutor, Inspector Mwangi, applied for witness summons to issue to John Ongori, a motor vehicle Inspector at Kakamega.

After the learned trial magistrate ordered that the summons be issued, the same were handed over to the process server at Butali Law Court, Mr. Moses Sande Bwoyere, for service on the witness.

The process server later swore an affidavit of service, in which he explained that he had served the witness, John Ongori, with the witness summons. However, the witness is alleged to have refused to sign the summons, because the witness was of the view that the Butali Court was corrupt.

In these circumstances I note that the person who is said to have made the allegations of corruption is neither the complainant nor the accused person. He is a potential witness, who was scheduled to testify on behalf of the prosecution.

The applicant before me has not explained to this court how the allegation by that potential witness would result in the complainant or the accused failing to have justice dispensed by the trial court.

The learned Senior State Counsel has not indicated if he has any good reason for accepting as true, the allegation made by John Ongori. If such a reason were to be placed before the court, I would be obliged to evaluate it. But as things stand, for now, I find no basis for concluding, as I have been invited to do, that it would not be in the interest of justice, for both the complainant and the accused, for the case to proceed to further hearing before the learned magistrate at Butali.

If this court were to order that the case be transferred on the strength of unsubstantiated comments made by persons outside court, to other persons who were also outside the court, that would make a mockery of the justice system. I say so because anyone wishing to have a case moved from a court which they did not like, for any reason, would simply cause allegations of impropriety to be made against such court. That would then be a simple but sure way of striving to avoid courts that anybody was uncomfortable with.

By enabling any person to benefit from such a scenario, the court would have played into the hands of unscrupulous people. I am sorry that, whether or not the witness, John Ongori, has any legitimate reason for making the allegations attributed to him, the state has not demonstrated the same to this court.

On the other hand, if there is any substance to the allegations attributed to John Ongori, I would expect the learned Senior State Counsel to ensure that the witness records a statement with the police. By so doing, the witness would have done his civil duty, of ensuring that appropriate action may be taken to rid the justice system of corrupt officers.

If, for any reason, John Ongori has no basis for justifying the allegations attributed to him, then the police ought to consider investigating him, with a view to taking appropriate action against him.

It must be emphasized that it is a very serious matter indeed, to make allegations of corruption, or of any other impropriety, on the part of any judicial officer, as all judicial officers are enjoined, by law, to dispense justice fairly and without fear or favour.

Those judicial officers who are corrupt are a disgrace and should not only be relieved of their duties, but should also face criminal prosecution, where appropriate.

In the same vein, any person who makes unwarranted allegations of corruption or of any other impropriety on the part of a judicial officer, should be made to appreciate that by peddling rumours, untruths, innuendos, half-truths or lies about the judiciary, they do more harm to the society, which is misled into losing faith in an institution that should be the custodian of the rights of every person.

In order to ensure that appropriate action is taken in this matter, I hereby direct that the learned state counsel should provide copies of this ruling to the P.C.I.O. Western Province, with a view to getting to the bottom of the allegations attributed to John Ongori.

In the meantime, I decline to order that the case be transferred from Butali to the Chief Magistrate's court Kakamega. It is, instead, directed that the Traffic Case No. 98 of 2007 shall proceed to further hearing and to determination thereafter, before the learned trial magistrate at Butali.

***Dated, Signed and Delivered at Kakamega, this 7<sup>th</sup> day of October, 2008.***

**FRED A. OCHIENG**

**J U D G E**