



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

(CORAM: OJWANG J.)

MISC CRIMINAL APPLICATION NO. 224 OF 2007

BETWEEN

GURNAM SINGH.....APPLICANT

-AND-

REPUBLICRESPONDENT

RULING

By the Chamber Summons of 21/3/07 the applicant who is acting for himself in person, is seeking the consolidation of two cases which are currently being heard in the Chief Magistrate's Court at Kibera.

Just as learned State Counsel *Mr. Makura* submits, such an application should in the first place have been made before the trial Court.

This is because, the greatest familiarity with the charges, and with the nature of that case, abides with the trial Court. Only the trial Court can consider the application for consolidation on the merits and make an appropriate first ruling thereon.

Besides, the trial Court files have not been brought before this Court – and so this Court could not possibly proceed, entirely in the dark, to order consolidation. In those circumstances, this Court would be lacking the objective factual basis for any orders at all, judiciously.

The applicant says he had asked for consolidation of the charges before the trial Court, but the request wasn't adverted to; and he had apprehensions when he contemplated repeating the same request before the same Court; this is how he came to the High Court. The reason this Court cannot change the better (possible) judgement on that issue by the trial Court, has already been stated above. If it is true that the applicant did request consolidation – but the request was unregistered on the records, and the request elicited no response – that would be a procedural error which I am not at this stage in a position to attribute to the trial Court.

In the light of the reasoning set out in this ruling, I will now order as follows:

- 1. The trial Court shall consider that there is a formal application before it to consider the question of consolidating *Criminal Case No. 5720/06* with *Criminal Case No. 6585/06*.**

2. The trial Court shall allocate a date on priority for considering the consolidation application on the merits – before its next date of hearing for the two Criminal Cases.

3. The trial Court shall accord the matter a fair hearing on the merits, and render a formal, reasoned ruling on the said application for consolidation.

4. This matter be listed for mention before the trial Court on *Wednesday 16/5/07*.

5. Following the delivery of *Ruling* by the trial Court as indicated in these orders, that Court may proceed to hear the substantive case in accordance with its scheduling.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 9th day of May, 2007.

J.B. OJWANG

JUDGE

FURTHER ORDER

The accused shall be supplied with a certified copy of the ruling herein.

J.B. OJWANG

JUDGE

9/5/07