



**REPUBLIC OF KENYA**

**HIGH COURT AT EMBU**

**MISC CRIM APPLI 52 OF 2007**

**STEPHEN MURIITHI WANGERA.....1<sup>ST</sup> APPELLANT**

**KENNEDY MURIMI MWANIKI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicants have made two applications the first being the revision of the order canceling their bond. The state counsel has conceded this application and on the reasons advanced by counsel for the applicants, I agree with the state counsel that there is no good reason proven to cancel the bond. The allegation of threats against witnesses do not prejudice prosecution case because the witnesses have already given evidence.

I therefore set aside the order of the Trial Magistrate and order that the bond of the applicants be reinstated forthwith.

**J. N. KHAMINWA**

**JUDGE**

The other prayer made is that the trial should be transferred to another court because the Trial Magistrate has shown bias in this matter by canceling the bond against the applicants. The provisions of the transfer of a criminal case by the High Court are contained under section 81 CPC 1 (a) is applicable here. Whenever it is made to appear to the High Court that a fair and impartial trial cannot be heard in any criminal court subordinate thereto the court may order that the case be transferred to another court or that the accused be committed for trial to itself.

In case an accused person makes such an application he shall sign bond with or without sureties conditioned that he will if convicted pay the costs of the prosecutor.

In this case the court has heard submissions of applicants counsel and of the state counsel. The court finds no facts to make it think that the Trial Magistrate shall not be able to give the applicants impartial trial. The fact that she did cancel the bond in the circumstances of this case is no evidence that she was biased against the appellants. It could be that she misdirected herself but there is no bias proved against her.

In the circumstances it does not appear to me that the applicants shall not get impartial trial in her court. Also the applicants have not executed bond as contemplated under section 81 CPC I do not see any reason to order transfer. The criminal case shall remain in the hands of Ojoo Ag. Senior Resident Magistrate at Baricho Court. It is so ordered.

Dated this 2<sup>nd</sup> July, 2007.

**J. N. KHAMINWA**

**JUDGE**