



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Crim Appli 364 OF 2007

YUSSUF SHARIF AHMEDAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Before me is an application by way of Chamber Summons dated 21/5/2007 filed by the applicant YUSSUF SHARIF AHMED. It seeks for two orders that –

1. This honourable court may be pleased to order the transfer of criminal case No. 2014 of 2005 from Makadara Chief Magistrate's Court to any other court of equal jurisdiction.
2. This Honourable court may be pleased to grant (applicant) any other orders it may deem fit and just.

The application is supported by the affidavit of the applicant

sworn on 21/5/2007. It is deponed in the affidavit that on 23/1/2007, Lady Justice Lesiit, allowed the removal of Criminal Case No. 2014/2005 Makadara from court No.3 (Ms. Karani SRM). It is deponed that when the applicant went for the trial of the case in court No. 3, he was sent to court No.5, then to court No.2, again then again to court No.3. The shuttling of the case, it was deponed, was because the magistrates argued that there was no difference between court No. 3 and courts Nos. 5 and 2. It is also deponed that when the appellant was ultimately taken back to court NO.3, Ms. Karani SRM, refused to deal with him.

Ms. Gateru, of the learned State Counsel, submitted that her

perusal of the subordinate court file indicated that part of what the appellant was complaining about was true. Counsel conceded to the application for transfer of the case.

In his submissions in response to the State Counsel's submissions, the applicant stated that the case had now been allocated to court No.2, for hearing. He stated that he was happy to proceed with the hearing of the case in court No. 2. He also stated that he wanted the hearing of the case to be expedited.

I have perused the record.

Indeed, on 23rd January 2007, Hon. Justice Lesiit in exercise of the powers conferred on the on the High Court under section 81 of the Criminal Procedure Code (Cap.75), ordered that criminal case No. 2014/2005 be removed from the trial magistrate, MISS KARANI SRM, and be transferred for hearing de novo before any other competent magistrate in Makadara Law Courts. Thereafter, the applicant seems to have been taken in circles at Makadara Law Courts, which has forced him to make this application. However, he now says that the case has been allocated to court No. 2, and that he is satisfied with his case proceeding for hearing in court No. 2. He also states that the case is already due for hearing in court No. 2.

I wish to reiterate that orders of this court have to be complied with by subordinate courts without fail. The record of the lower court proceedings does not shows implicit willingness to comply with the orders of this court, issued by Hon. Justice Lesiit on 23/1/2007. That should never have happened and should never be repeated.

Be that as it may, I order that the case No. 2014/2005 do proceed to hearing as ordered by Hon. Justice Lesiit on 23rd January 2007. The

hearing will be before any magistrate other than Miss KARANI SRM. The hearing of the case should proceed expeditiously as envisaged under section 77(1) of the Constitution, as justice delayed is justice denied.

Dated and delivered at Nairobi this 8th October 2007.

George Dulu

Judge

In the presence of –

Applicant in person

Ms. Gateru for State

Eric - Court clerk