

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
HCCR – APP 14 OF 2006

JOHN MUMALI SHITABOLE.....APPLICANT

VS

REPUBLIC.....RESPONDENT

RULING

By an application dated 24th January, 2006, by way of Notice of Motion pursuant to the provisions of section 81 of the Criminal Procedure Code, the applicant seeks orders:

(a) That the court be pleased to order the transfer of Busia P. M. Cr. Case no.2107 of 2005 to Bungoma Law Court or Mumias Law Court for trial and disposal.

The application is supported by the annexed affidavit of John Munali Shitabule sworn on the 24th day of January 2006 and on the grounds:

(i) That the trial magistrate has shown open bias in the case of shouting at the applicant in court.

(ii) That the said trial magistrate has convicted and fined the applicant in Busia P.M. CC. Cr. C. No.102/2005.

For the applicant, it was argued that the trial Magistrate has shown open hostility against the applicant. That the said Magistrate has already convicted and fined the appellant Ksh.3000/= in the appellant's absence in Busia S.R.M. Juvenile cause no.102/2005 which led to the appellant being charged in Busia P.M. Cr. Case No.2107/2005. That he is apprehensive that he will not get a fair and just trial if this case is transferred from Busia to Bungoma for purposes of hearing and disposal.

For the Republic, it was argued that the application is not grounded on law. That the verdict was given on 11th October 2005 in P. M. Cr. C. no.102/2005. The applicant was ordered to pay Ksh.2500/= towards the up-keep of the subject child. Hence this case cannot be transferred. The applicant can only appeal against that order.

I have carefully analysed the application and addressed my mind to the issue at hand. It is clear to me from the proceedings that the case was determined on 11th October, 2005. The applicant was ordered to pay a fine of Sh.2500/= towards the up-keep of the subject child. Accordingly, there is nothing to transfer. The applicant can only appeal if he meets the requirement of appeal out of time which is not the subject matter of this application.

These are the reasons why I dismissed the application dated 24th January, 2006.

Dated and delivered at Bungoma this 22nd day of May, 2006.

N.R.O. OMBIJA

JUDGE