

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPLICATION NO.37 OF 2005

(From Original Criminal Case No.3426 of 2004 at Kibera Law Courts)

ALPHAS MALIENDA MUHANDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was charged with drug trafficking.

His case is due for hearing tomorrow the 1st February 2005. He is before this court today for orders that the said Criminal Case No.3426 of 2004 be transferred from the said court to any other court of similar jurisdiction. The application is supported by sworn affidavit of the applicant who has deponed among others that he has known the presiding magistrate Ms Mwangi for the last 3 years and that he was a girlfriend of Ms Mwangi's sister by the name Nduta and the friendship went sour. And for the said reasons the applicant is apprehensive that he will not get justice.

The application is opposed by the state on the ground that the reasons stated by the applicant are not sufficient to create apprehension in the mind of the applicant that he will not have a fair and impartial trial before the magistrate.

First I would like to state that there has been inordinate delay in bringing this application. The hearing of the criminal case is coming tomorrow the 1st February 2005. The date was taken on 19th November, 2004. This application for transfer ought to have been brought much earlier.

The reasons given by the applicant would not have created a reasonable apprehension in any right thinking person's mind that a fair and impartial trial might not be heard before the magistrate and I am not inclined to order a transfer of the criminal case from that court to any other court. But be it as it may I order that the same be heard by any magistrate other than Ms. Catherine Mwangi.

These are the orders of this court.

Dated and delivered at Nairobi this 31st day of January 2005.

J.L.A OSIEMO
JUDGE