

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL MISC.APPL.NO. 18 OF 2004

**(From original conviction and sentence of the Senior Resident Magistrate's Court at
Oyugis in Criminal Case No.46 of 2003**

SILAS OMWAMI APPLICANT.

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant seeks court to order transfer of OYUGIS CRIMINAL CASE NO.46 OF 2003 from that court to Kisii Chief Magistrate's Court for trial. He deponed and submitted that he would not get justice before the Oyugis Court as he was not allowed to cross examine witnesses and that the court made rulings in favour of the prosecution.

I have considered the application and have the opportunity to go through the lower courts proceedings. I find the application has no merit. There is no specific averment that the magistrate will be biased against the applicant. No reason was cited why he would act so. So far ten witnesses have given evidence. Prosecution closed their case and court ruled that applicant has a case to answer. During the hearing it is clear that he examined all the witnesses. He never raised any complaints. It is only after he was put on his defence he asked for the case to be transferred to another court. He told the court that the ruling in trial-within-a trial was not in his favour. He applied for the case to be taken to another court.

He did not allege any reason for the magistrate to be biased. He did not even ask him to disqualify himself. The magistrate did the proper thing to advise him to make application for transfer in the High Court.

The fact that the ruling in trial within a trial was not in his favour is no good reason to have the matter transferred. If at the close of the case the court rules against him due to the ruling in the trial within a trial the applicant then can appeal and canvass any reasons he feels the admission of the statement was not proper. The high court cannot order transfer of a case on an application every time a magistrate rules against an accused person. It must be shown that for some specific reason the magistrate will not be impartial. That has not been shown in the present application and the same is therefore dismissed.

KABURU BAUNI

JUDGE