

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC CRIM APPLI 75 OF 2004

1. BENJAMIN MUINDI NTHUKA

2. BONIFACE MUIA NTHUKA ::::::::::: APPLICANTS

VERSUS

THE REPUBLIC ::::::::::: RESPONDENT

RULING

The applicants are apprehensive that they will not be accorded a fair trial before the magistrate since their bonds were irregularly cancelled by the magistrate and they had to be released by orders of this court. They have made other allegations against the magistrate though not substantiated. It would have been proper if the application was first made before the trial magistrate before they came to the high court. The fact that a magistrate has cancelled bond does not mean that a magistrate is biased. I would encourage the parties to make such application before the trial magistrate first. The court will not encourage such application.

In this case, however, application is granted and the applicants will execute bonds of Ksh. 20,000/= each with a surety of like sum for them to take care of the costs that may be incurred in the prosecution of the matter in the event that they are convicted.

The case is hereby transferred to Makueni court for hearing and disposal. The applicants do appear at Makueni court on 14/12/04.

Dated at Machakos this 9th day of December 2004

Read and delivered in the presence of

R.V. WENDOH

JUDGE