



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPLICATION NO.422 OF 2002

(In the matter of an intended appeal)

Between

SIMON NJAGIAPPLICANT

VERSUS

REPUBLIC RESPONDENT

(intended appeal from conviction(s) and sentence (s) of the

Magistrate’s Court Criminal Case No.2745/00 NAIROBI and 916/02 KIBERA

Between

REPUBLIC..... PROSECUTOR

VERSUS

SIMON NJAGI ACCUSED

R U L I N G

The applicant in this case is one Simon Njagi who appeared in person while arguing this application which was opposed by Mr. Okello for the state.

According to the first prayer of the applicant Mrs. Teresia Njeri Ngugi a Magistrate hearing Criminal Case No.2745/00 before the Chief Magistrate Nairobi should be disqualified from handling that case. The 2nd prayer in the application is that Criminal Case No.2745/00, Criminal Case No.916/2002 and Criminal case No.508/2002 at Kibera should be consolidated for purposes of hearing. The application was supported by an affidavit duly sworn by the said Simon Maina Njagi sworn on 15th May 2002.

According to the applicant the said Njeri Ngugi, a Magistrate; is a complainant in Criminal Case No.916/2002. He has deponed and argued that the said Magistrate would naturally be biased against him in deciding Criminal Case No.2745/2000 which is now pending judgement. The events leading to the trial Magistrate in Criminal Case No.2745/2000 becoming a complainant in 916/2002 occurred on 19/3/2002 when the applicant purportedly ultered a false document to the said Njeri. As on 19th March 2002 the record in Criminal Case No.2745/2000 shows that the applicant was still being tried by the said Teresia Njeri and that the applicant had not given his defence. Todate the applicant has never given his defence, thus forcing the trial Magistrate in Criminal Case No.2745/2000 to order his defence case closed. I would

have been willing to allow the trial Magistrate to write the present judgement had the applicant voluntarily given his defence in Criminal Case No.2745/2000. I would also have allowed her to write the said judgement had the applicant's defence been taken on record as on the 19th day March 2002. I would also have allowed her to write this said judgement had the applicant not raised an objection about the trial Magistrate being biased from way back in May 2002. I am therefore not surprised that the state is not objecting to the present application. I therefore direct that Criminal Case No.2745/2000 should be heard afresh before a new trial Magistrate. Given the fact that the trial Magistrate closed the defence case before the accused could address the court in his defence it would not be wise to order a new Magistrate to write judgement in that case using the proceedings on record. The proceedings on record are not adequate proceedings to enable the new trial Magistrate to write a judgement. It is therefore prudent to order a new trial in this case.

The second prayer relating to the consolidation of Criminal Case No.916/2000, 508/2002 and now 2745/2000 has also been closely considered. I have noted that Mr. Okello did not support this prayer. In his affidavit the applicant has stated in paragraph 9;

“that the facts in the three cases are related and constitute to the events which happened or which afforded an opportunity for their occurrence or transaction”.

In paragraph 13 the applicant has deponed further:-

“Criminal case No.2745 and 508/02 are similar charges while 916/02 is a consequence of the two”.

My perusal of Criminal Case No.2745/2000 discloses that the offence was committed in December 2000, at Pan Africa Trucks and Equipment Offices in Nairobi. The sum obtained was Ksh.15,000/=. The complainant is one David Holley. The person who allegedly sent the applicants to collect the money was one Gideon Moi.

Criminal Case No.916/2002 relates to a charge of forgery. The complainant is Justice Mboghli Msagha and the offence was committed on 15th March 2002 at Nairobi. Count two was committed on 15th March 2002 and the complainant is a Deputy Registrar of the High Court. Count three was committed on 19th day of March 2002 while the complainant is the trial Magistrate in Criminal Case No.2745/2002. The accused is charged alone in Criminal Case No.916/2002.

In Criminal case No.508/2002 the applicant herein does not appear to be an accused person in the case unless he has used a different name from the one appearing in Criminal Cases No.2745/2000 and 916/2002. The offence in issue in 508/2002 is cheating in respect of count one while being in being possession of papers for forgery is the charge in issue in count two.

A thorough perusal of the three cases does not convince me that the second prayer of the applicant has any merits. In the first place, I am not convinced by the applicant's argument that the three cases are capable of consolidation because they involve different complainants. Secondly the offences are different in nature and the date the offences were committed are different dates and places. There is nothing in Criminal Case No.508/02 that involves the current applicant.

I therefore find that the applicant has not given any convincing legal reason to show that he is entitled to be granted his second prayer in the application. I therefore dismiss the second prayer in the application. Criminal Case Nos. 2745/2000, 508/02/ (Kibera) and 916/2002 should continue being heard as separate criminal cases. Order accordingly.

R.M. MUTITU

JUDGE

23/7/2002

Delivered dated and signed in the presence of the applicant and Mr. Okello for the state.

R.M. MUTITU

JUDGE

23/7/2002