



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CRIMINAL APPLICATION NO.123 OF 2001**

**FRANCIS K. CHELULE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant Francis K. Chelule is charged with the offence of wilfully obstructing a police officer in due execution of duty contrary to Section 253(b) of the Penal Code.

The particulars of the charge do not show clearly how the police officers were obstructed or what duty they wanted to perform. Before the charge the accused had appeared before the High Court Nakuru and complained that the Police at Molo were unnecessarily harassing him and sought protection of the court.

The High Court Nakuru arrested and bonded him to appear before the O.C.S. Molo. It is then that the O.C.S., Molo charged him in Molo court with the offence referred to at the beginning of this Ruling.

When the applicant appeared before Molo Court the prosecutor said that he opposed his release on bail as he had been bonded to keep peace and had committed another offence before 3 months were over. The learned trial magistrate agreed with the court prosecutor and said many things about the accused.

The learned trial magistrate did not appear to consider the fact that the applicant/accused had pleaded not guilty and was presumed innocent until proved guilty.

The learned magistrate said in his Ruling that the applicant is a Local Government Councillor.

It is not clear why he thought that the applicant would not attend his trial. But the wording of the magistrate in his Ruling appear to have refused the applicant release on bail to teach him a lesson. The fact that the applicant appeared in court to be arrested and presented himself to the O.C.S. Molo shows that he respects the law. The learned magistrate appears to have made conclusions that the applicant is already guilty of the offence he is charged with,. It is therefore no surprise that the applicant feels that he will not have a fair trial before Molo court.

The learned Principal State Counsel Mr. Oriri Onyango does not oppose the application for both release of the applicant on bond and for transfer of Molo Criminal case No.1342/2001 to the Chief Magistrate's Court, Nakuru. I have carefully considered the matter and will make the following orders:-

(a) The applicant Francis K. Chelule will be released on a personal bond of shs.200,000/- to appear before the Chief Magistrate, Nakuru on 6th August, 2001.

(b) Molo Senior R.M. Criminal Case No.1342/2001 is ordered transferred to the Chief Magistrate's Court, Nakuru for hearing and determination by a Magistrate of competent jurisdiction.

Dated and delivered at Nakuru this 20th day of July, 2001.

D. M RIMITA

JUDGE

20.7.2001