



**Kariuki alias Karis Stano Baro Kimeu Waruguyu v Republic (Miscellaneous Criminal Application E220 of 2023) [2025] KEHC 660 (KLR) (Crim) (15 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 660 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E220 OF 2023  
AM MUTETI, J  
JANUARY 15, 2025**

**BETWEEN**

**STANLEY KARIUKI ALIAS KARIS STANO BARO KIMEU  
WARUGUYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from original of Chief Magistrate court Cr. Case no 3494 of 2021 before Hon L. Gacheru at Makadara. An application for seeking to transfer case to another Magistrate Court)*

**RULING**

1. The applicant in this matter seeks to have the matter transferred to another court of competent jurisdiction for hearing and determination.
2. The application is not dated but is expressed to be brought under the provisions of Section 362, 367 of the *Criminal Procedure Code* as well as Articles 22 and 165 (3) (b) of the *constitution*.
3. The application on the face of it is brought under the wrong provisions of the law since this court's power to transfer cases is specifically provided for under section 81 of the *Criminal Procedure Code*.
4. However, by dint of Article 159 of the *constitution* this court shall proceed to consider the matter on merit in order to determine whether there exists any plausible cause for the transfer of the matter.
5. It is important to state at the outset that the transfer of cases from one court to another is a matter that should be approached with extreme caution by courts.
6. This is so because to transfer cases willy nilly is likely to encourage forum shopping by litigants who are keen to find a court they perceive to be friendly to them and which is likely to rule in their favor.



- The court must therefore be convinced beyond peradventure that there exist reasonable and plausible reasons for an order of transfer to issue.
7. The courts must also bear in mind the stage at which an application is made, the status of the same and the resources expended in the prosecution of the matter.
  8. The applicant in this matter is aggrieved by the fact that the learned Honorable magistrate denied him bail and for that reason he considers the court to be biased against him.
  9. The applicant is obviously ignorant of the fact that the *constitution of Kenya* under Article 49 (1) (h) expressly grants courts authority to deny bail where there are compelling reasons to do so.
  10. The mere fact of a court denying an accused person bail should not necessarily be taken to mean that the court is biased against the accused persons.
  11. The applicant should also know that where a person has been denied bail by the court the person remains at liberty to renew his bail application as the trial progresses or where dissatisfied with the decision of the judicial officer, the accused person can as well approach the High Court on appeal.
  12. The application for transfer of a matter from one court to another just like an application for the recusal of a judge or judicial officer from a matter should be founded on cogent reasons for the belief that the court that the matter is sought to be transferred from is unlikely to do justice in the matter. Courts must guard against forum shopping by accused persons who seek the transfer of cases not because the trial court is biased against them but out of fear that they are unlikely to secure a favorable outcome before that particular court.
  13. Trial courts must be allowed to perform their duty without unnecessary interference by the High Court more so where the party seeking the intervention of the High Court does not provide reasonable grounds that would persuade the judge to find that the interests of justice are unlikely to be served if the matter continues being heard before the court hearing the matter.
  14. The court of appeal in *Galaxy Paints Company Limited v Falcon Guards Limited* [1999] eKLR had this to say about applications for recusal:

Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.” See *Raybos Australia Property Limited & another v. Tectram Cooperation Property Ltd. & Others* 6 NSWLR 272.
  15. Although the Court of Appeal was not dealing with an application for transfer of a case but an application for recusal it is the view of this court that the effect of ordering a transfer of a case from one judicial officer to another is akin to an order emanating from a recusal application since the court trying the matter by allowing a recusal application ceases to exercise jurisdiction over the matter. It follows therefore that a court in determining a transfer application must remain alive to the fact that the applicant could as well be engaged in forum shopping.
  16. The applicant has pleaded with this court to have his case transferred from the current trial magistrate to another court of competent jurisdiction. He has cited the reason of denial of bail as his main ground for seeking the transfer.



17. This court is not minded to grant the application on that basis. To do so would be to encourage parties who are unsuccessful in their quest for bail to resort to applications for transfer of their cases willy nilly without necessarily exhausting the right of review or appeal.
18. The court has also considered the applicants claim that he was denied an adjournment by the magistrate on a day he claims to be unwell.
19. Upon careful perusal of the record this court did not find any evidence to support the allegation by the applicant. It is not enough for the applicant to merely state to a court that he is unwell and therefore unable to proceed with a hearing without placing before the court medical evidence to support that claim. That ground must therefore fail.
20. The applicant has argued that he intends to pursue a plea bargain once the matter is transferred to another court. The applicant did not however tell this court why since 19<sup>th</sup> of November 2021 when plea was taken he has not explored the option of a plea bargain.
21. It is the humble view of this court that the applicant is not being candid with this court considering that seven witnesses have already testified in the matter thus it would be unreasonable for this court to transfer the matter from the trial court to another court in order for the applicant to explore plea bargain. The applicant is at liberty to make his plea offer before the current trial magistrate who in any case has no control over the prosecutions decisions whether or not to accept a plea bargain.
22. In the circumstances this court finds that the application by the applicant is unmeritorious. The applicant has not established any illegality, impropriety, irregularity or incorrectness in the record of proceedings to allow this court to intervene by way of revision and order a transfer of the matter to another court of competent jurisdiction. The application is hereby dismissed with an order that the original file be returned to the trial court for further hearing.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF JANUARY 2025.**

**A.M. MUTETI**

**JUDGE**

In the presence of:-

Court Assistant: Kiptoo

Kiptoo: Court Assistant

Applicant in person

Ms Ogega for the Respondent

