



**Jore v Republic (Miscellaneous Criminal Application E104 of 2023)
[2024] KEHC 15648 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E104 OF 2023**

**DK KEMEL, J
DECEMBER 9, 2024**

BETWEEN

BRIAN BARAZA JORE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein filed the present application dated 22/11/2023 seeking principally an order that his case namely Siaya CM Cr. SO No 51 of 2020 be transferred from the present court presided over by Hon. Limo to another court of competent jurisdiction.
2. The Applicant’s gravamen is inter alia; that the initial magistrate who handled this case was later transferred; that the incoming magistrate Hon. Limo took over the case and allowed him to start the case Denovo; that subsequently the prosecution failed to recall the witnesses; that the trial magistrate later directed that the case should proceed from where it had reached; that the new change of directions by the trial magistrate has prejudiced him as he has been intimidated and threatened and compelled to proceed from where the transferred magistrate left; that the new turn of events is against the initial agreement reached between him and the court that the case has been delayed; that it is in the best interest of justice that the case be transferred to another magistrate who will take it as a matter of priority and expedite the hearing and determination of the matter.
3. The application was canvassed by way of written submissions. It is only the Applicant who filed submissions. Learned counsel for the Respondent indicated that the Respondent will leave it to court but that they will file submissions in Revision No E082/2024 wherein they have sought for revision of the ruling of the trial magistrate in which he had ordered the case to start denovo. Indeed, parties herein took directions that the said revision No E082/2024 do await a determination of this application.



4. The Applicant's handwritten submissions are dated 26/11/2024. They are a reiteration of the grounds in support of the application. I need not reproduce the same.
5. I have given due consideration to the Applicant's application and the submissions presented. It is not in dispute that upon the transfer of the trial magistrate, the matter was taken over by Hon. Limo who duly complied with the provisions of section 200 of Criminal Procedure Code and that the Applicant elected to proceed Denovo which request was duly granted by the learned trial magistrate. The record reveals that the prosecution sought to avail the witnesses and managed to get a few and proceeded with the matter. In all the proceedings, it is noted that the requests for adjournment by the prosecution was duly appreciated and acknowledged by the Applicant who indicated that he had no objection. There is nowhere in the record that the learned trial magistrate reversed his orders and ordered the matter to proceed from where it had reached. Hence, the assertions by the Applicant are farfetched. Even the claims of having been threatened and intimidated, have not been proved by the Applicant as there is no record of the same in the proceedings.
6. This court has power to transfer cases from one subordinate court to another by dint of the powers bestowed upon it by statute and the *Constitution*. However, a party seeking for such an order must present convincing reasons to warrant such a transfer. It is trite that transfer of cases should not be granted whimsically for the reason namely that all judicial officers are deemed to be executing their duties in accordance with their oath of office and that the court users and members of public are expected to have faith and confidence in the courts. Hence, the request for transfer of cases from one court to another should not be based on the basis of a litigant's mere displeasure, whim or unfounded apprehension. If the request is based on apprehension, then the said apprehension should be that of a reasonable person and must be assessed in light of the true facts as they occur and which must be seen objectively. This is the more reason that litigants should not be allowed to choose which judicial officers should hear and determine their cases since all judicial officers take oath to administer justice to all people impartially and without fear, favour, affection or ill will. The issue of the transfer of the case as sought by the Applicant must be seen through this prism. I have not seen any prejudice suffered by the applicant herein if this application is declined since he will just continue with his case as before. Besides, the transfer has the effect of further delaying the matter to the disadvantage of the parties herein. The faster dispensation of the matter will be in the best interest of the parties herein.
7. In view of the foregoing observations, it is my finding that the Applicant's application dated 22/11/2023 lacks merit. The same is dismissed.

RULING DATED AND DELIVERED THIS 9TH DAY OF DECEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:

Brian Baraza Jore.....Applicant

M/s Mumu.....for Respondent

Ogndofor Respondent

