



**Numnda v Republic (Miscellaneous Criminal Application
E159 of 2024) [2024] KEHC 15478 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL APPLICATION E159 OF 2024**

**TA ODERA, J
DECEMBER 3, 2024**

BETWEEN

FRED NDIGWA NUMNDA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. That may this application be considered as urgent and be heard in a priority basis
2. That may this Hon. Court be pleased to allow this application and call upon the Magistrate's Court file NO. E667 of 2023 for analysis in this case.
3. That may this Hon. Court be pleased to find that the OB NO.46/15/5/2023 was reported before Magistrate's Court at Kisii vide MCCR No. E667 Of 2023 and the case was withdrawn under section 204.
4. That, may this Hon. Court be pleased to find that O.B. No.46/15/5/2023 bears the name of the complainant and different names of the accused person where the applicant herein is not reflected.
5. That may this Hon. Court be pleased to find that O.B. NO.46/15/5/2023 gave birth to OB No.66/16/5/2023 where the accused herein is implicated.
6. That, may this court be pleased to allow this application due to the biasness at the Magistrate's Court at Kisii.
7. That, leave be granted for the application to be heard on a priority basis.
8. That any other relief that the court will grant.



He seeks a finding that OB 46/15/5/2023 is the one which gave birth to OB 66/5/ 2023 under which he has been charged. He says Kisii MCR no. E667 of 2023 was withdrawn under Section 204 and he accuses the magistrate of Bias.

The state has objected to the application saying that the application is premature and dead on arrival as it seeks prayers which cannot be discerned and the issues raised are those of trial and can only be responded to by the investigating officer.

The applicant responded saying he is a lay person and that Article 50 bars use of the same OB in more than one case. Further that the same OB was used to charge him against the law.

I have carefully considered the application herein and the reply. The matter is already determined and accused was not a party to it. Article 50 of the Constitution provides for fair trial and it applies to both parties in a case. Article 50 of also imposes upon prosecution the duty to supply statements and documents which they intend to rely upon but they have no duty to supply what they do not intend to rely upon. In case accused requires any occurrence book to establish his case then, he can seek it through the OCS of the concerned police station.

It is trite law that “he who alleges must prove”. Accused is represented in the criminal case. Since applicant is alleging that the same occurrence book number in the said lower court file was used to charge him then it will be upon him to cross-examine the investigating officer on the said issue. No nexus has been established between this case and the said criminal case.

The application is misconceived and devoid of merit I proceed to strike it out.

T.A ODERA

JUDGE

3.12.24

Delivered in the Presence of:

Koima for State

Applicant in Person

Court Assistant - Oigo

