



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC. CON. & HR NO. 6 OF 2019

IN THE MATTER OF AN INTENDED TRANSFER OF CR. CASE NO.644/2014 AT SPM'S COURT MAKINDU.

AND

IN THE MATTER OF ARTICLE 23(1) 165, 25, 50 OF THE CONSTITUTION.

AND

IN THE MATTER OF SECTION 81 (1) (a) (b) (b) (d) (e) AND SECTION 121 (1) (2) (3) OF THE CPC AND SECTION 60 OF EVIDENCE ACT.

PAUL MUSYOKA KYANGU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant filed an application seeking an order of transfer of SPM's Court Makindu Cr. Case no. 644 of 2014. The reason for this request is that the trial magistrate forced him to proceed with the case when exhibits had not been produced in court.
 2. I have perused the file and proceedings: This is an old robbery with violence case of 2014. The case has never taken off since 2014. The first witness was testifying on 1st March 2019. The witness referred to some motor vehicle photographs to which the Applicant objected since the vehicle was not produced. This had been noted and a ruling made.
 3. These photos and other exhibits were only being marked for identification and not being produced by this witness.
 4. When the matter reaches the point of production of the exhibits, the Applicant will be given an opportunity to object or confirm their production. The non-availability of those exhibits as indicated by the trial court may assist the Applicant in his defence.
 5. Let the Applicant be warned that if he makes it difficult for the trial court to proceed with the hearing of the case, then he will be kept out of the proceedings. Article 50(2) of the Constitution 2010 provides: ***Every accused person has the right to a fair trial which includes the right -***
 - (f) ***to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed.***
- If the prosecution decides not to avail the motor vehicle complained of, it's their business since that is their exhibit.
6. I have not found any reason to make this court interfere with the proceedings in the lower court case.
 7. The Applicant is advised to conduct himself in a civil manner before the trial court, for his matter to proceed smoothly.
 8. I also direct that the Applicant be served with a certified copy of the typed proceedings of **1-3-2019 to 31-05-2019** which include PW1's testimony. This will enable him prepare to cross examine PW1 one COSMAS KYALO MUANGE. The learned trial magistrate is directed to have the said witness recalled for that purpose.
 9. Finally, let the lower court file be immediately returned to the station with a copy of this ruling. The Applicant to be served with a copy of

the ruling.

Orders accordingly.

DELIVERED, SIGNED AND DATED THIS 7TH DAY OF JUNE, 2019 IN OPEN COURT AT MAKUENI.

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H. I ONG'UDI

JUDGE