

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISC. CRIMINAL APPLICATION NO.61 OF 2019

JOHN MOI ONDITI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The applicant seeks to have his case **Criminal Case No.509 of 2017** transferred to Ogembo Law Courts to another court at Kisii Law Court. His reasons for the said application are that he was forced to cross-examine by force and that he sought statements and he was not given. He states that he sought to be taken for treatment and that his life is in danger. That the trial magistrate is very harsh and did not record his requests down and that there is no transparency in the court.

2. The prosecution opposed the application stating that the applicant was sent back to Ogembo Law Court for a retrial and that the applicant had been supplied with the statements before the retrial.

3. I have gone through the trial court record. As per the proceedings the applicant's case has been going on after Justice Majanja ordered a retrial. I have noted that the applicant was given statements on the 17/2/2017 in court during his first trial before re-trial. The trial is proceeding in the same file. It is assumed that he has the statements. It is the same trial with the same facts. The applicant alleges bias. The court proceedings clearly show that his plea was taken and witness testified. He had a chance to cross-examine all the witnesses.

4. The trial court has very clearly indicated the applicant's conduct during the trial. He was even granted bond so that he could seek medical treatment. In my view so far the applicant has been accorded a fair trial. There is no bias shown nor is their indication that the applicant made a complaint before the trial court.

5. I find that the applicant is forum stopping. This application is dismissed. He shall be returned to Ogembo Law Court for his defence hearing. The Deputy Registrar shall return the lower court file to Ogembo Law court for further hearing and disposal. Mention before the trial court on the 4/12/2019 as indicated in the court file.

Dated, signed and delivered at Kisii this 5th day of November, 2019.

R.E. OUGO

JUDGE

In the presence of;

Applicant In person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Clerk