



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**MISC APPLICATION NO. 12 OF 2017**

**LEAH CHEPKIRUI BARMALEL.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

By way of a Notice of Motion application dated 10<sup>th</sup> November 2017 the applicant seeks the following orders:

1. That the court do order that Sotik Criminal Case No. 44 of 2014 be heard and determined in a different court.
2. That the court do order for the transfer of Sotik Criminal Case No. 44 of 2014 be transferred to Bomet Law Courts for hearing and determination.
3. That the court be pleased to issue such orders as many be fair and just to secure the applicants rights to a fair trial.

The grounds are that:-

- (a) On the 23<sup>rd</sup> day of March 2016, the then trial magistrate ordered that the matter proceed for further hearing on 7<sup>th</sup> July 2016 but since then the matter has not proceeded.
- (b) That the trial magistrate breached applicants fundamental rights by allowing counsel for the Accused to use delaying tactics by staying the matter without valid reasons given or any order from the High Court stopping the matter from proceeding
- (c) That the applicant does not have any more trust in the trial court following the way it handled the matter for more than one year without good reason.

I have called for and perused Sotik PM's Criminal Case No. 44 of 2014.

This is an old matter which ought to be given hearing on priority bases. It is alleged that there does exist an appeal against the ruling of the learned trial magistrate handling the matter at the time. An appeal by itself is not a bar to the hearing of a case unless there are specific orders on stay or the High Court has called for the file.

The applicant appears to have been uncomfortable with the way the matter was being handled by the trial magistrate.

That trial magistrate has since been transferred and directions taken under S.200 of the CPC whereupon the case was to be heard DE NOVO before another magistrate.

This application for transfer of the case has been overtaken by events. It is not merited and same is dismissed. The original file to be returned to Sotik Law Courts.

Mention before the In charge on 12/4/2018 for further directions.

Ruling delivered dated and signed in open court this 6/4/2018. Asimwe holding brief appellant Mr. Barasa for the Respondent

**M. MU YA**

**JUDGE**

**6/4/2018**