



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. APPLICATION NO.103 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

MIRITI STANLEY MUREA.....ACCUSED

RULING

The applicant Miriti Stanley Murea filed an application seeking that this court transfers Tigania SRM CR. C. No. 906 of 2015 to any court other than Tigania Law Courts.

The application was based on grounds on face of application to the effect that on 6.8.2018 his defence was closed without being given a hearing. That the trial Magistrate refused to recuse himself;

That he had complained to JSC against the trial court and that he was apprehensive that he can't get fair hearing.

That the trial magistrate verbally threatened to send him to jail and he feared that these threats will be realised.

That the trial court is biased against him and not tempered whenever the matter is called out and even uses abusive language by calling him stupid in open court.

That on 6.8.2018 that trial court denied his request for adjournment and closed his defence case without a hearing.

In supporting affidavit applicant averred that the trial magistrate declined to hear his application for recusal.

I have considered the applicants application as well as supporting affidavit and the Replying affidavit of Judith Makena Kalaine the complainant in Tigania SRMC. CR.C No. 906 of 2015. I have also considered the states oral submissions in court that the applicant ought to have appealed against the decision of the trial magistrate declining to recuse himself and not file another miscellaneous application. Mrs Mwathi for Respondent/State submitted that applicants conduct is a delaying tactic.

I have also considered the complainant advocates submissions. I do find that the reasons given by the applicant seeking recusal of the trial magistrate in a trial that commenced in 2015 at the time when he is expected to defend himself is an abuse of the process of the court and is meant to delay the expeditious trial in these proceedings. This court therefore finds that the application is unmerited. The applicant is hereby ordered to appear before the trial court on 11.10. 2018 and defend himself. He should also avail his witnesses if any.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 4TH DAY OF

OCTOBER 2018.

In the presence:

Applicant: PIP

Respondent: Mrs Mwathi for DPP.

Mr Mwirigi Advocate for Interested Party.

HON. A.ONG'INJO

JUDGE