

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS CRIMINAL APPLICATION NO. 58 OF 2017

JAMES MUGAMBI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By a Motion on Notice dated 10th August, 2017, the applicant urged the Court to call for and examine the record of the trial court in ***Maua CMC Criminal Case No. 222 of 2012 Republic vs. James Mugambi*** and satisfy itself as to the correctness and legality of the orders of the trial court made on 26th October, 2016 and 14th June, 2017, respectively as well as the entire proceedings from 26th October, 2016 to date.

2. The application is supported by the applicant's supporting affidavit sworn on the same date. The applicant alleged that the prosecution closed its case on 14th July, 2014 when he was placed on his defence. That vide ***High Court Miscellaneous Criminal Application No. 51 of 2014***, Wendoh J ordered on 10th June, 2015 that the matter do begin de novo before another court, other than Hon. Maundu. That on 26th October, 2016, the prosecution withdrew the case under ***section 87 (a) of the Criminal Procedure Code*** which the court acceded to but failed to acquit him. That despite as aforesaid the lower court has still proceeded with the said proceedings.

3. Pursuant to the aforesaid application, this court called for the lower court record. Having perused the record, I have ascertained that it is true the applicant was placed on his defence on 14th July, 2014. That on 26th October, 2016, the prosecution applied to withdraw the case under ***section 87 (a) of the CPC*** which the trial court acceded to. Further, the court has seen an order made on 10th June, 2015 by Wendoh J ordering that the case be heard de novo by a different court other than Hon. Maundu, SPM.

4. ***Section 362 of the CPC*** provides:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

5. The above provision is clear as to the jurisdiction of the court. As I have already observed a court of concurrent jurisdiction had ordered on 10th June, 2015 that this matter be heard de novo before different court other than Hon. Maundu, SPM. Any further proceedings after that order amounted to a nullity. In this regard, the purported withdrawal of the charges on 26th October, 2016 and the subsequent incarceration of the applicant was illegal.

6. I have seen the indication that the applicant has another case within Maua Law Courts and that it would be in the interests of justice that he be tried elsewhere.

7. Accordingly, I quash all the proceedings undertaken after 10th June, 2015 and direct that this matter do start de novo as ordered by Wendoh J. I therefore direct that this matter be heard at the Maua Law courts before any other magistrate who has not handled any of the cases involving the applicant. The order by Ogoti, CM that the matter be transferred to Tigania Law Courts is hereby set aside. The applicant is to remain on the same bond terms he was before it was cancelled on 14th June, 2017 by the Maua Court.

8. The accused is to be released from custody forthwith. He is to appear before the Maua Chief Magistrate, Maua for directions on 5th April, 2018.

DATED and DELIVERED this 20th day of February, 2017.

A. MABEYA

JUDGE