

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL MISC APPLICATION NO. 3 OF 2016

JULIUS NJERU NJAGI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant's application by way of chamber summons dated 14th January 2016 is that the criminal proceedings pending in the magisterial court at Siakago in Criminal case No. 277/2013 be availed to this court. The applicant has also applied that there be a stay of proceedings in the same case pending the hearing and determination of this application. These two prayers are required on a priority basis and prayers No. C and D will be gone into after the file has been brought to this court from Siakago.

2. The main issue as to why the above criminal case is being sought to be brought here is that the trial magistrate disregarded the mandatory provisions of section 202 of the Criminal Procedure Code (Cap 75) Laws of Kenya. According to Mr Muraguri counsel for the applicant, the trial court ought to have dismissed the charge because the complainant was not in court during the resumed hearing.

3. Secondly, he states that the trial magistrate ordered witnesses to give evidence on the ground that the complainant will give his evidence on a future date. This he states is contrary to the law since these witnesses were not persons named in the charge filed in court and further, they are also not complainants in the same case.

4. In response to counsel's application Ms Mbae applied for more time to familiarize herself with the proceedings of the Siakago magisterial court. Additionally, she applied for a typed copy of the proceedings in that court to enable her respond to the application.

5. I have considered the application in particular prayers A and B of the chamber summons. I find that this is an interlocutory application in which it is sought to stay the trial in the magisterial court pending the hearing and determination of this application. In the interest of justice and expedition of this matter I have treated this application as an application for revision of the order complained of. It is settled law according to *Uganda v Dalal (1970) EA 355* that an application for revision of an order must relate to an order which has finality such as an acquittal or a conviction. It is not proper to call for the court file whose trial is still pending in the magistrate's court. If this were to be done it will disrupt the proceedings in the magisterial court. Furthermore it is not a legal requirement that the complainant must give evidence first before other witnesses do so. It is the prosecutor 's duty call witnesses in the order they deem fit. The court may only interfere if there is an abuse of the court process.

6. In the light of the foregoing the applicant's application is hereby dismissed since it is not a final order of a magisterial court that is sought to be revised. It is equally important to point out that the applicant's counsel did not indicate the legal provisions of the law upon which his application was based. It is for that reason that I decided to treat it as an application for revision.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 9th day of **FEBRUARY 2016**.

In the presence of Mr. for the applicant and Ms Mbae for the State

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

09.02.16