



**REPUBLIC OF KENYA**

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

**CRIMINAL PETITION NO. 1 OF 2016**

**JOHN MUNYI NJOGU.....PETITIONER**

***VERSUS***

**DIRECTOR OF PUBLIC PROSECUTION**

**CHIEF MAGISTRATE EMBU LAW COURTS**

**THE ATTORNEY GENERAL .....RESPONDENTS**

**RULING**

1. This ruling is in respect of an application for the transfer of the case from the court of the learned trial magistrate to another magistrate for trial. The reasons why transfer is being sought are that the instant trial magistrate had made a ruling in which he ruled against an application brought by the petitioner/accused to be allowed access to the specimen materials that had been collected for analysis by the Government Chemist Department. According to counsel for the petitioner/accused, the instant learned trial magistrate will not conduct a fair trial. The second reason advanced for the transfer is that the charge against the accused is a serious one, which needed counsel to be availed for the defence of the petitioner/accused. It is to be noted that after the above ruling was delivered by the instant learned trial magistrate, counsel on record then, who is the same counsel in this application, withdrew from acting for the petitioner/accused, with leave of the court.

2. Ms Mbae for the State opposed the application.

3. The original application in this matter was in relation to the petitioner/accused being given access to the specimen materials, which had been collected to be analyzed by his expert witness. This specimens were: a soil sample in a plastic bottle, a spinach vegetable in an envelope and a wipe out chemical poison. This application was rendered moot by the fact that the said specimen materials were not preserved following their being received by the police from the Government Chemist Department, in Nairobi. It is this fact which appears to have triggered the instant application for transfer of the trial from the instant learned trial magistrate to another one of competent jurisdiction. It also on record that the petitioner /accused had been placed on his defence following the close of the prosecution case in that court.

4. I have considered this application and I do not intend to make a ruling regarding the application for transfer. This application for transfer should in the first instance be made to the instant learned trial magistrate. The reason being that the allegations made in support of the application for transfer relate to the ruling that was made by that court and other related matters.

5. In the circumstances, I hereby order that the application for disqualification of the instant learned trial magistrate from trying the case should be heard and determined by him.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this 1st day of **September 2016**.

In the presence of Mr E. Njiru holding brief for Mr. Njiru for the Applcant/ Petitioner and MS. Matere for

the Respondent

Court clerk Njue

**J. M. BWONWONGA**

**JUDGE**

**01/09/2016**