



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
MISC APPLICATION NO. 32 OF 2016

JOSEPH KAVITIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

By an undated Notice of Motion application filed on 21st March, 2016, the applicant, Joseph Kaviti, has applied for leave to file an application seeking to have his case, Shanzu Principal magistrate's Criminal Case No 507 of 2013, Republic versus Joseph Kaviti, transferred from Shanzu law courts to Mombasa law courts.

According to Mr Ayodo, learned state counsel, Shanzu law court has two magistrates and all the applicant should do is to seek to have the trial magistrate in this case recuse herself from hearing his case and only she declines, then he can proceed to this court for redress by way of appeal or revision.

To this, the applicant indicated he had no problem with court No1 at Shanzu law court.

In consideration, and having listened to both learned counsel for the state and applicant/accused, I have also perused the record from the lower court file, application and supporting affidavit.

I agree with the learned counsel for the state that the applicant ought to have made his application before the trial magistrate indicating the reasons he wants to have the case transferred from her court for consideration by herself. He can only approach this court if the trial magistrate declines to recuse herself from hearing his case and he feels aggrieved by that decision. This is so as to discourage situations where parties would be forum shopping.

I therefore strike out the applicant's undated Notice of Motion application and direct that the applicant makes his application to have the case transferred from the current trial court to another or for the trial magistrate to recuse herself from hearing the case before the said magistrate.

It therefore follows that the Shanzu Principal Magistrate Criminal case No 507 of 2013, Republic Vs Joseph Kaviti be returned and placed before the trial magistrate for further orders.

Ruling signed, dated and delivered this 3rd day of October, 2016.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr Ayodo for the state

Applicant in person

C/clerk- Kiarie