

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CRIMINAL APPEAL NO. 30 OF 2014

R A O.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

One A O K has filed the notice of motion dated 15-4-2014 on behalf of one R A O an accused person in Nyando SPMCRC No. 254 of 2014 seeking several orders which include transferring the case from Nyando court to another court. According to him the said accused person has not received justice at Nyando since the witnesses have been threatened and that the court did not take into consideration the mental status of the accused. He deponed that the accused has some psychiatric condition and therefore not fit to be prosecuted. The said applicant has sworn a supporting affidavit dated 26-6-2014.

The annexures to the affidavit showed that the accused was charged with the offence of “offering medical services without required qualification or licence contrary to section 13 (1) as read with section section 22 (1) of the Medical Practitioners and Dentist Board Cap 253 Laws of Kenya. At the time of arguing the application the applicant notified the court that the accused had been sentenced to a two year probation term.

The state has opposed this application through the affidavit of Mr. George. A Mongare the learned state counsel. Essentially, he has attacked the application on the grounds that the applicant has no locus standi and if anything the issue can be well ventilated in the criminal proceedings.

I have perused the application. Though the same has many facets and request, I think the application was simply bringing the same pursuant to the ...excitement created by the Kenyan Constitution 2010. The application is however unmeritorious as the applicant does not have any locus standi especially in criminal case at Nyando. He claims that he is a surety and that he has a stake in the case. Whereas this could be true his only stake is to the extent of the bond posted and to ensure that the accused complies with the bond terms.

Further and in any event if the criminal case has been concluded the only remedy is for the applicant to advice the accused to seek legal redress in the high court especially if he thinks that her constitutional rights were violated.

The application is otherwise dismissed.

Dated, signed and delivered at Kisumu this 12th day of March, 2015.

**H.K.
JUDGE**

CHEMITEI