

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISC. CRIMINAL APPLICATION NO. 92 OF 2014

FRANCIS INGOSI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 26/11/2014 and duly filed in Court sought for the following orders:

1. THAT this application be certified extremely urgent and ought to be heard ex-parte and on priority basis.

2. THAT pending hearing and determination of this application, stay orders do issue vis-a-vis Mumias SPM CR. NO. 949 of 2011 till further orders of this court.

3. THAT 2nd respondent herein be ordered to personally respond on the allegations raised herein by way of affidavit and attend court for cross-examination.

4. THAT, this Honourable Court be and is hereby pleased to order transfer of Mumias SPM CR. NO. 949 of 2011 to the Chief Magistrate's Court at Kakamega for re-allocation to another court of competent jurisdiction for hearing and final determination.

5. Costs of this application be provided.

2. From the grounds tendered and the averments in the Applicant's Supporting Affidavit, the application was premised on an alleged confrontation between the Applicant and the second Respondent who was then a Senior Principal Magistrate and in-charge of the Mumias Law Courts. As a result of that history, the Applicant was apprehensive that he was not going to get a fair trial going by how the said second Respondent had previously handled three matters in which the Applicant was involved. These were Criminal Case No. 949 of 2011, Criminal Case No. 179 of 2014 and Criminal Case No. 352 of 2011. In the said cases the Appellant contends that the second Respondent denied her bail pending trial and he had to seek the intervention of the High Court to be so released. Several other averments were made touching personally on the second Respondent with the plea that the case ought to be totally removed from the Mumias Law Courts.

3. This Court is however aware that the second Respondent herein has since been transferred from Mumias Law Courts to another station. That, in the considered opinion of this Court, takes care of a larger part of the Applicant's claim in this matter. Given the calling that judicial officers must remain independent in the discharge of their duties, I have no reason to suggest that justice will not be done in the criminal case in issue before any of the judicial officers at the Mumias Law Courts. Needless to say, the Applicant has not suggested anything to that end.

4. I accordingly direct that the Mumias Criminal Case No. 949 of 2011 be placed before the duty Court for allocation to any other competent Court at the Mumias Law Courts for further dealing.

5. This file is henceforth marked as closed.

DELIVERED, DATED and SIGNED this 7th day of May, 2015

A. C. MRIMA

JUDGE