



**REPUBLIC OF KENYA**

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

**HC CRIMINAL REVISION CASE NO. E073 OF 2025**

**MORRIS** **MWIKA**  
**GITONGA.....APPLICANT**

***VERSUS***

**THE**  
**REPUBLIC.....RES**  
**PONDENT**

**RULING**

The Applicant herein, one Morris Mwika Gitonga, is facing a charge of grievous harm Contrary to Section 234 of the penal code, at Tigania Law Courts.

On 31/10/2025 the trial Chief Magistrate, Hon J. Macharia, made a decision that it was practically impossible to have the mater heard within the locality of Tigania Law Courts due to hostility and public anger. He further explained that the environment there was volatile and hostile, where himself and the prosecutor feared for their personal safety.

The Hon Chief Magistrate therefore transferred the matter to Meru Chief Magistrate's court for further directions on the issues of bond and also trial.

The said finding prompted filing of a Notice of Motion dated 3rd November, 2025 challenging the said transfer and bond denial.

Having considered the application, I identify the following issues for determination: -

- 1) Whether a subordinate court has jurisdiction to transfer a criminal case to another court of equal status.*
- 2) Whether the impugned order violated the applicant's right to bond/bail.*
- 3) Whether this court should interfere revisionary jurisdiction.*

Section 81 of the Criminal Procedure Code vests the power to transfer criminal case exclusively in the High Court. A subordinate court has no statutory authority to transfer a criminal case from itself to another court of equal jurisdiction.

While a trial court retains inherent power to manage proceedings before it, including controlling its court room and ensuring safety, such power does not extend to transferring a case outside the mechanism provided by law.

The Learned Chief Magistrate therefore transfer order legally untenable.

Article 49(1) (h) of the Constitution guarantees an arrested person the right to be released on bond or bail, or reasonable conditions, unless there are compelling reasons.

The transfer order resulted in the deferral of the bond hearing, thereby effectively denying the applicant timely consideration of bail. While security concerns may in appropriate cases, constitute compelling reasons, such reasons must be:

- *Raised formally*
- *Supported by reliable evidence, and*
- *Determined judicially after full ventilation*

In the present case, such process was not fully undertaken. The order therefore unjustifiably curtailed a constitutional right.

Under Article 165(6) and (7) of the Constitution and Sections 362 and 364 of the Criminal Procedure Code, this court illegality, impropriety, or irregularity in subordinate court proceedings.

Given that the impugned order was made without jurisdiction, without hearing the parties, and to the prejudice of the Applicant's constitutional rights, this court finds it proper to intervene.

In the premises, this court finds that the order made on 31<sup>st</sup> October, 2025 by the Hon Chief Magistrate of Tigania Law Courts, transferring Criminal Case No. E987 of 2025 to the Chief Magistrate's Court at Meru, was illegal, irregular and improper.

Accordingly, the said order is set aside. The criminal case shall be remitted back to the Hon Chief Magistrate at Tigania for hearing and determination.

The trial court shall forthwith hear and determine the matter on the issue of bond/bail in accordance with Article. Should genuine security concerns persist, the prosecution or the trial court may formally move the High Court under Section 81 of the Criminal Procedure Code for appropriate orders.

The Deputy Registrar shall transmit this finding and the trial court file without delay.

Matter be mentioned before the trial court for further directions on 6<sup>th</sup> January, 2026.

**STEPHEN M. GITHINJI**

**JUDGE**

**30/12/2025**

Mr. Nkinja for the Applicant

Mr. Adhi for the Respondent