



REPUBLIC OF KENYA



**Mbugua v Republic (Miscellaneous Criminal Application E030 of 2024)
[2025] KEHC 7387 (KLR) (Crim) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2024**

KW KIARIE, J

MAY 30, 2025

BETWEEN

ALEX MAINA MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Alex Maina Mbugua, the applicant, moved the court through a Notice of Motion dated July 19, 2024. The application is made under section 81 of the *Criminal Procedure Code*. He is seeking the following orders:
 - a. That Engineer Criminal Case No. E335 of 2024 Republic versus Alex Maina Mbugua be stayed pending the hearing and determination of this application and further orders.
 - b. That this honourable court do transfer the Engineer criminal case No. E335 of 2024 Republic versus Alex Maina Mbugua from Senior Principal Magistrate Court to Nakuru Chief Magistrate's Court for hearing and determination, and or any court of similar jurisdiction, but not Olkalou Nyahururu and Naivasha Law Courts.
 - c. The cost of this application is to be provided for.
2. The application is premised on the following grounds:
 - a. The applicant's life has been seriously threatened by the complainants and the DCIO, Njambini Police Station, on several occasions, hence the applicant's fear for his life.
 - b. That the applicant is being trailed by suspected people, some of whom have confronted him and threatened his life on his face.



- c. The court file before the Engineer Court was sneaked to different courts under suspicious circumstances. First, it was taken before Court No. 1, and later, on 12/6/2024, it was sneaked to Court No. 2 under unclear circumstances.
 - d. The state counsel wanted to conduct the hearing without the applicant's defence counsel, although he was seated in open court at the material time.
 - e. State counsel has personally threatened the applicant with dire consequences if they do not comply with their demands.
 - f. The applicant has been receiving anonymous telephone calls threatening his life.
 - g. That when the applicant took a plea and he was granted a cash bail, the police hijacked him from the cells and took him to an unknown place. It took the intervention of his defence counsel through the entire court administration to demand his return to the police cells at Engineer Law Courts. He had been removed from the police cells under suspicious circumstances.
 - h. The hijacking of the applicant from the police cells to an unknown place necessitated the intervention of the Principal Magistrate to order his return to the Engineer Law Courts. The applicant was only returned after several hours after his disappearance. That was threatening his life.
 - i. The DCIO, Njambini Police Station, has been detaining the applicant and releasing him several times after he bought his freedom.
 - j. The applicant is a target of elimination by the police and the relatives of the complainants.
 - k. The applicant will never be free to attend court freely. He always fears for his life as he feels insecure.
3. The respondent opposed the application on the following grounds:
- a. The applicant has not provided any legal basis for the transfer to another court.
 - b. The applicant has not provided any legal basis to stay criminal proceedings in this case.
4. On the 20th day of March 2025, parties were directed to file and serve their written submissions. The respondent filed theirs on the 23rd day of April 2025, but the applicant did not file any.
5. Section 81 of the *Criminal Procedure Code* provides:
- Whenever it is made to appear to the High Court—
- a. that a fair and impartial trial cannot be had in any criminal court subordinate thereto; or
 - b. that some question of law of unusual difficulty is likely to arise; or
 - c. that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or
 - d. that an order under this section will tend to the general convenience of the parties or witnesses; or
 - e. that such an order is expedient for the ends of justice or is required by any provision of this Code,



It may order—

- i. that an offence be tried by a court not empowered under the preceding sections of this Part but in other respects competent to try the offence;
 - ii. that a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;
 - iii. that an accused person be committed for trial to itself.
6. Courts have been confronted by applications for the transfer of cases. In the case of *Kinyatti vs Republic* (KLR 562), the Court of Appeal held:
- ... in deciding whether or not to transfer a case from one court to another, the test was whether the appellant had made out a clear case by discharging on the balance of probabilities the burden of showing that the apprehension in his mind that he may not have a fair and impartial trial is of a reasonable character.
7. Earlier, the High Court, in *Shilenje v Republic* [1980] KLR 132 (Trevelyan J). cited with approval from the commentaries by Sir H.T. Prinsep and Sir John Woodroff in “Commentary and Notes” (14th Edition) (1906) and “Criminal Procedure in British India” (1926), respectively. It reads:
- The High Court will always require some very strong grounds for transferring a case from one Judicial Officer to another, if it is stated that a fair and impartial inquiry or trial cannot be held by him, especially when the statement implies a personal censure on such officer.
8. The present application is curious. The complaint is not against a judicial officer but the Directorate of the Criminal Investigation Njabiini. This (D.C.I) office does not control the Engineer Magistrates Court. The best option for the applicant is to escalate his complaint to the superiors of the Njabiini DCIO for the necessary action.
9. Secondly, the applicant contends that the Ol Kalou, Nyahururu, and Naivasha Law Courts should be excluded from hearing the case. He says he can only have a fair trial in the Nakuru Law Courts. This constitutes forum shopping.
10. I find that the application lacks merit, and the same is dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 30TH DAY OF MAY 2025

KIARIE WAWERU KIARIE

JUDGE

