



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII**

Crim Misc Appli 108 of 2005

SIMEON ROBI MARWA APPLICANT

VERSUS

REPUBLIC RESPONDENT

(From original Migori PM's Court Criminal Case No. 524 of 2005)

RULING:

The applicant is the second accused person in Migori PM Cr. C. No. 524 of 2005 where they are charged with forgery. He seeks to have the case transferred from Migori court to any other subordinate court with jurisdiction for hearing and disposal.

It was deponed by the applicant and retaliated in submission by Mr. Soire that the applicant was initially charged of the same offence vide Migori PMCCr. No. 777 of 2004. The hearing started before Mr. E. Awino PM and two witnesses gave evidence. The prosecution then withdrew the case under s.87 (a) CPC. Applicant was re-arrested and charged again jointly with Esther Bosibori Minyonga who is now the first accused person. The said Bosibori was the second witness who had testified before Mr. Awino. The hearing of the new case is set to be heard by the same Magistrate.

It was submitted that the magistrate having heard part of the evidence would not be partial if he were to hear the case all over again.

The application was opposed by the learned Senior State Counsel.

I have considered the application. Indeed Mr. Awino the Principal Magistrate heard two witnesses. However a part from this there is no other reason given by the applicant as to why he fears the magistrate will be biased. I think his fear is misplaced. The fact that the magistrate heard the evidence of two witnesses alone would not lead to his being impartial. Infact from the proceedings on record he heard only one witness fully. The second witness never finished giving her evidence before the prosecution withdrew the case. I believe the magistrate is well level headed not to let previous evidence influence his decision.

In the circumstances I find no merit in the application and reject it.

Dated 7th March 2006.

KABURU BAUNI

JUDGE

CC – Mobisa

Mr. Soire for Applicant

Mr. Kemo for Respondent



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