



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION NUMBER E053 OF 2021

DANIEL KINYUA KARIMI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant was charged **Molo C.M. Court Criminal Case Number E598 OF 2020** with one count of **Obtaining Money by False Pretences Contrary to Section 313 of the Penal Code** and two counts of **Issuing Bad Cheques Contrary to Section 316 A (1)(a)(4) of the Penal Code**.

2. In the charge sheet it was alleged that the offence of obtaining was committed on 17th February 2017 at Molo Town in Molo Sub-County with respect to a parcel of land namely Plot A7 Rumuruti Township. The two others were allegedly committed on 19th and 30th September 2019 at Molo Town in Molo Sub-County.

3. Vide a Notice of Motion dated 15th March 2021 brought under **section 71, 72, 76 and 81** of the **Criminal Procedure Code CAP 75 Laws of Kenya** he sought interim orders of stay of proceedings in the case pending the hearing and determination of this application *inter partes* and a transfer of the case from Molo Chief Magistrate's Court to Nyahururu Chief Magistrate's Court.

4. The application is supported by the grounds on its face and the Supporting Affidavit of the applicant sworn and the Supplementary Affidavit sworn on 28th May 2021 both at Nyahururu on 15th March, 2021.

5. The main ground for this application is that the charges arise out of the sale agreement for the plot which is situate at Rumuruti in Laikipia County. The agreement was entered into at Nyahururu on the 17th February 2017. That he was arrested and held at Rumuruti Police Station where he drew the two cheques in question. In addition the complainant Mary Muthoni Wakaimba in the Criminal Case has filed a civil suit in **Nyahururu CMCC Number 144 of 2018** which suit she has deposed that the cause of action arose within the Jurisdiction of the Nyahururu Law Courts. All the witnesses to these transactions are residents of Laikipia County.

6. He has annexed to his affidavits the charge sheet, the agreement of sale, the allotment letter for the plot and the complainant's statement to the DCI at Molo on 12th May, 2020 in which she states that she had reported the matter to Rumuruti Police Station, and it was in that station that the cheques were issued.

7. That it was then a surprise when he was on 21st November 2020 arrested by DCI officers from Molo who escorted him to Molo and charged him with these offence on 23rd November 2020.

8. He stated that in the course of trial he shall request for a scene visit to confirm that the plot in question exists and vacant. He therefore prayed that it is just that this case be transferred to Nyahururu Law Court's whose local limits the purported offences were committed.

9. The prosecution confirmed that they were served and had filed and served a Replying Affidavit. None was filed in the court file and none was forwarded to my email as requested.

10. However I did see a document bearing the Letter head of the ODPP and a heading 'Replying Affidavit'. It bears no court stamp, it is not attested and cannot pass for an affidavit.

11. That besides the issue is whether the application is merited.

12. Jurisdiction is conferred by Constitution, statute or case law. This is settled.

13. The **Magistrates' Courts Act no 26 of 2011** confers jurisdiction in criminal cases in the following terms:

“6. Criminal jurisdiction of a magistrate's court

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as may be conferred on it by —

(a) the Criminal Procedure Code (Cap. 75); or

(b) any other written law.”

14. **Part IV** – of the **Criminal Procedure Code** makes provisions relating to all criminal investigations place of trial. There is the general authority granted by **Section 66** to courts to deal with persons charged with offences committed within Kenya who are within their local limits. There is the specific at **Section 67** where an accused person is required to be sent to the district where the offence was committed. Then there is now **Section 71** which lays the law thus:

“Subject to the provisions of section 69, and to the powers of transfer conferred by sections 79 and 81, every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence.”

15. The law refers to the court in whose local limits ... the thing happened. What does that mean? In the ordinary course of business the Judiciary has demarcated courts with territorial of geographical jurisdictions. For good reasons, I believe both administrative and to ensure access to justice for persons within those jurisdictions. Jurisdiction is therefore not just the power to conduct judicial proceedings but the power to conduct those proceedings within the jurisdiction of that court i.e the geographical area within which the court may exercise its authority (**Black's Law Dictionary 10th Edition**) or as put by the **Concise Oxford English Dictionary 12th Edition** - *‘the territory or sphere over which the legal authority of a court...extend[s]’*.

16. Hence there is a reason for the reference to the local limits of the court or the district within which the offence was committed.

17. The facts of this case as drawn from the annexures are that the accused and the complainant entered into a sale agreement for a plot situate in Rumuruti. They did this in Nyahururu. When things went wrong the complainant complained at Rumuruti Police Station and the accused was arrested, and he drew some cheques the subject of the other charges while at Rumuruti Police Station. He was later arrested from Rumuruti by officers from DCI Molo because according to the complainant the DCIO at Rumuruti was transferred and the one who came in was not taking any action.

18. These facts are not disputed by the complainant or the prosecution. The only reason the complainant moved to Molo DCI office was because she was not getting the services she wanted from them. That cannot be the basis for conferring jurisdiction.

19. From the complainant's statement the only thing that happened in Molo is that she presented the cheques to her Bank in Molo and they bounced. That cannot create a doubt as to where the offence was committed. In my view the ordinary place of investigation would start with whether or not a plot of land existed in the first place, whether it belonged to the accused person etc. etc. The witnesses to this as, contended by the accused would on the ground.

20. For the sake of order, if there was any reasonable ground other than the transfer of an officer, to transfer the matter from Rumuruti DCIO's office to Molo DCIO's office there ought to have been official communication. Otherwise it creates the impression that there is more than meets the eye to the action by the officers from Molo DCIO's office. There is no reference to their colleagues at Rumuruti DCIO's office or what works had been done by those officers and no explanation was forth coming from the respondent as to why this action was taken.

21. Having said so, and upon consideration of the facts and the law, it is my view that **Section 81 (1) (e) of the Criminal Procedure Code** applies to this matter as it is in the interests of justice that an order do issue in terms of **Section 81(1) (ii)**, that **Molo Criminal Case Number E598 of 2020 Republic vs Daniel Kinyua Karimi** be transferred to Chief Magistrate's Court Nyahururu for trial and determination.

22. The Notice of Motion dated 15th March 2021 be and is hereby allowed, and the **Molo Criminal Case Number E598 of 2020 Republic vs Daniel Kinyua Karimi** be and is hereby transferred to Chief Magistrate's Court Nyahururu for trial and determination.

23. Orders Accordingly.

DATED, DELIVERED AND SIGNED VIRTUALLY THIS 16TH DAY OF AUGUST, 2021.

Mumbua T. Matheka

Judge

In the presence of: (Virtually)

Edna Court Assistant

Applicant present