



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
IN THE MATTER OF THE HIGH COURT SUPERVISORY
JURISDICTION OVER THE SUBORDINATE COURTS UNDER
SECTION 364 (1) (b), 74, 76(1) 79 AND 81 OF THE CRIMINAL PROCEDURE CODE

AND

IN THE MATTER OF BARICHO SENIOR PRINCIPAL MAGISTRATE'S COURT
CRIMINAL CASE NO. 683 OF 2020

REPUBLIC.....PROSECUTOR

V E R S U S

JAMES IRUNGU MAGONDU.....ACCUSED

DIRECTIONS

1. The accused James Irungu Magondu was charged with the offence of stealing Contrary to Section 268 as read with Section 275 of the Penal Code on the 3/11/2020 before the Baricho Senior Resident Magistrate.
2. The particulars of the offence are that on diverse dates between 8/6/2020 and 9/6/2020 at Ruiru Law Courts in Ruiru Sub-County within Kiambu County he stole Kshs 395,000/- the property of Antony Ngugi. He took plea (pleaded not guilty) and was released on bond of Kshs 200,000/- or cash bail of Kshs 100,000/-.
3. On the 10/11/2020, the prosecution urged for a transfer of the case to Ruiru Law Courts within whose jurisdiction the offence was committed. The trial court then directed that the court file be placed before the Senior Principal Magistrate, Hon. A. K. Mwicigi for directions.
4. The Senior Principal Magistrate gave directions, upon considerations of the circumstances that the offence was committed outside its territorial jurisdiction at Ruiru, within Kiambu County, that the Court file be placed before this court for directions to transfer to the court with territorial jurisdiction.
5. From the above narrative, it is evidently clear that the offence was committed outside Kirinyaga County wherein Baricho Law Courts are situated. Ruiru Law Courts fall under the territorial jurisdiction of the Ruiru Law Courts, within Kiambu County.
6. Section 79 of the Criminal Procedure Code (CPC) provides for transfer of cases between Magistrate's within the local limits of the subordinate court's jurisdiction.
7. Section 81 thereof donates wide powers to the High Court to transfer criminal cases from one Subordinate Court to another, and also to itself, upon exercise of Judicial discretion, and upon tangible reasons that demonstrate that a fair trial will not be had if the case is not transferred to another court.
8. Section 72 provides that a trial may be undertaken at the local limits of where the offence has been committed.
9. In the instance case, there is no uncertainty as to where the offence was allegedly committed – Section 74. If there is uncertainty, upon a report being made to the High Court, the court is obligated to decide by which court the offence shall be tried – Section 76(1).
10. The accused person who was admitted to Bond/Bail on the 3/11/2020 has no objection to the intended transfer of the case to the Ruiru

Law Courts for hearing and disposal. He was present when the Learned Magistrate made the orders of transfer. The only issue that arose is that the Executive Officer, Ruiru Law Courts refused to register the transferred case, stating that there is no High Court Order directing the transfer of the case to Ruiru Law Courts and returned the court the to Baricho, Law Courts, a position the Senior Principal Magistrate at Baricho Law Courts took great exception as to his powers to make such an order. The court file was thus returned to the Baricho Principal Magistrate's Court.

11. Be that as it may, I hereby issue **directions and orders that**;

(a) Baricho Senior Principal Magistrate Criminal Case No. 683 of 2020 – Republic –vs- James Irungu Magondu is hereby transferred for hearing and determination to the Senior Principal Magistrate's Court at Ruiru with immediate effect.

(b) Accordingly, I order and direct that the said criminal case be mentioned before the Senior Principal Magistrate at Ruiru Law Courts on the 10th December, 2020 in the presence of both the Accused persons and the prosecution counsel for allocating it for trial before itself or another Magistrate with competent jurisdiction.

12. Orders accordingly.

Dated, Signed and Delivered at Kerugoya this 26th day of November, 2020.

J. N. MULWA

JUDGE