

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. 13 OF 2019

(CORAM: HON. R.E. ABURILI - J)

DANIEL OKORO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(An Application seeking transfer of Ukwala Criminal Application

No. 36 of 2019 to Siaya Law Courts for hearing and determination)

RULING

1. This ruling determines the Application dated 7th June 2019 by **Daniel Okoro** seeking for transfer of **Ukwala Misc. Cr. Case No. 36 of 2019** between the **Sub-County Public Health, Ugunja versus Bernard Peter Odero Oor and Daniel Okoro**, the Applicant herein.
2. The case before the Ukwala SRM's court concerns Public Health wherein the accused are owner and occupier respectively of business premises wherein Bar/Lodging and Restaurant business is carried out and wherein the sub-county Public Health Officer, Ugunja has assessed and found the premises not to be fit for habitation for purposes of the said business due to public health concerns.
3. The applicant in this matter is the tenant to the 1st accused in the lower court case, a Mr. Benard Peter Odero Oor. In his submission in support of this application for transfer of the case from Ukwala Law Courts to Siaya PM's court, he claims that at Ukwala Law Courts, he is intimidated by supporters of the 1st accused who is an influential person. He does not lay any blame on the judicial officer handling the criminal case.
4. The 1st accused in the said case is his Landlord. It is expected that the applicant herein cultivates a harmonious relationship with his host and where there is a rift, the Business Premises Rent Tribunal and the courts exist to assist parties in accordance with **Article 50(1) of the Constitution**, to ensure that their disputes are resolved.
5. There are two accused persons in the Ukwala Case and there is no indication that the 1st accused person Landlord has conceded to the transfer of the case from Ukwala to Siaya Law Courts. The applicant has not sought for separate trials. That being the case, it is not possible to transfer a case for trial in a different court on account of an application by a joint accused person without the consent of the co-accused person.
6. Therefore, albeit the applicant claims that he is not comfortable with Ukwala Law Courts because the 1st accused person's supporters intimidate him, this court finds that Ukwala Law Courts has jurisdiction to hear and determine the matter and as there is no application for separate trials, I am unable to find merit in the application which hereby declined and dismissed.
7. This file is closed.

Dated, signed and Delivered at Siaya, this 29th Day of July 2019.

R.E. ABURILI

JUDGE