

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC. APPLICATION CASE NO. 19 OF 2013

REPUBLIC APPLICANT

AND

WILSON MBITHI MUNGUTI RESPONDENT

RULING

1. The application dated 4/2/2013 seeks orders that **Machakos CMC Cr. 869/2011** be transferred to the **Mavoko Principal Magistrate's Court** for hearing and determination.
2. It is stated in the affidavit in support of the application that the offence was committed in **Athi River** which previously fell under the jurisdiction of **Machakos Law Courts**. That **Athi River** currently falls under the jurisdiction of **Mavoko Law Courts**. That all the witnesses reside within **Athi River Municipality** and the continued prosecution of this case at the **Machakos Law Courts** has subjected the witnesses to untold hardship. That the transfer of this case to **Mavoko Law Courts** will be convenient to all the parties. It is further deponed that the Respondent has no other pending cases at **Mavoko Law Courts**.
3. The application is opposed. The Respondent has stated in his replying affidavit that a similar application was made before the trial court and the same was rejected. That there was no appeal or review sought by the prosecutor. That there is no application to transfer the case against his co-accused. The Respondent read malice in the application for transfer.
4. The application was canvassed by way of written submissions which I have duly considered.
5. It is not in dispute that the alleged offence took place in **Athi River** and that the witnesses also come from **Athi River** within the jurisdiction of **Mavoko Law Courts**. This case was filed at the **Chief Magistrate's Court, Machakos** before **Mavoko Law Courts** became operational. The devolution of the court is supposed to ease access to justice. However, there is no explanation why the prosecution would apply for the transfer of the Respondent's case only when the charge sheet annexed to the affidavit in support clearly reflects that there are two accused persons, that is the Respondent and one **Josphat Mwenda John**. It is not clear from the application how there will be easier access to justice since the application is in respect of only one accused person. In the circumstances I find the application has no merits and dismiss it with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at **Machakos** this 17th day of **March** 2015.

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JUDGE