



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC. CRIMINAL APPLICATION NO. 88 OF 2013**

JAPHET NOTI CHARO ..... APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**RULING**

By way of a Notice of Motion application dated the 15th day of August, 2013 and expressed to be brought under Section 71 and 76 of the Criminal Procedure Code the applicant seeks that there be stay of the proceedings in Criminal Case Number. 1832 of 2013 Mombasa Chief Magistrate's Court pending the hearing and determination of the application.

Secondly, that the Chief Magistrate's Criminal Case be transferred to Malindi Chief Magistrate's Court for its final hearing and determination.

The grounds are that the applicant was charged for an offence of forceable detainer of plot number. 5596 Malindi, in Mombasa Chief Magistrate's Criminal Case Number 1832 of 2013.

That the Applicant and the Complainant in the said Criminal Case all reside in Malindi.

Further that the land in issue is situated in Malindi where the alleged offence is alleged to have taken place.

That all applicants Witnesses are in Malindi and so are the prosecutions.

That there are Courts with competent jurisdiction to hear and determine the matter and offences of forceable detainer at Malindi.

This application is opposed by the Complainant who in his replying affidavit depones in paragraph 3 of his replying affidavit filed in Court on 3rd October, 2013 that he sought the assistance of the DCIO Mombasa after he had made numerous reports against the applicant to the Malindi police and no action was taken owing to the Accused immense influence.

That his reports to Malindi police are contained in OB numbers 57/22/2/11, 53/7/3/02, 40/22/8/08 and number 80/7/3/03.

It is further contended that if the matter is transferred to Malindi the Witnesses would be afraid to testify because the applicants followers/supporters would likely turn up in large numbers.

The investigating officer **IP ELVIS CHARO** also depones in his replying affidavit that he has gathered adequate intelligence information that the applicant will interfere with prosecution Witnesses owing to his great influence within Malindi.

Having perused the affidavits in favour and against the application and the submissions by Counsel. It is noted that the offence in question relates to land situated in Malindi. There is great apprehension that prosecution Witnesses would be intimidated if the matter is heard in Malindi and they may not be willing to testify.

It is noted that the Accused would have to meet the cost of his Witnesses but he need not bring his Witnesses to Court until the Court determines that he has a case to answer. He is said to be an influential person in Malindi. He cannot be heard to say that he would not be able to afford traveling costs to Mombasa.

I do find that there are good reasons to have the matter heard and determined in Mombasa. The application has no merit and it is dismissed. The earlier orders of stay are hereby vacated.

Ruling delivered dated and signed this **26th** day of **March, 2014**.

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**M. MUYA**

**JUDGE**

**26TH MARCH, 2014**

**In the presence of:-**

Mr. Otera for the Applicant

Miss Fundi for the State

Court clerk Musundi