



REPUBLIC OF KENYA

High Court at Bungoma

Criminal Miscellaneous Application 84 of 2012

REPUBLIC	APPLICANT
	VRS	
ABDIRIZAK MOHAMUD	1ST RESPONDENT
MAHAD MOHAMUD AFRA	2ND RESPONDENT

RULING

Transfer of criminal proceeding

[1] The court is being asked to order a transfer of Bungoma CMCCRC No. 2294 of 2012 and 2295 of 2012 from Bungoma Chief Magistrate Court to Nairobi Milimani Court for hearing and final disposal. The application by the prosecution dated 19/11/2012 is grounded on the following reasons:

- a) The offences, subject matter of those cases were committed at Nyayo House, which is within the local jurisdiction of Nairobi chief Magistrate's Court.
- b) That the records to be relied upon at the trial in those cases are in Nairobi.
- c) The witnesses to be called in those cases either reside or work for gain in Nairobi.
- d) The Respondents (accused persons in those cases) have rented houses and reside in Nairobi.
- e) The transfer is for general convenience of the Respondents and the prosecution witnesses.
- f) That the cases were registered in Bungoma just because the arrest was made at Malaba which is within Bungoma County.
- g) That no prejudice will be occasioned on the Respondents by the transfer.

Respondents oppose transfer

[3] The Respondents oppose the application on three main grounds, namely:

- a) That the applicants, have not shown by evidence that the Respondents have rented houses in Nairobi, and
- b) That there is no bar or harm to have witnesses to be called to come and give in Bungoma Chief Magistrate's court.

c) That the reasons advanced by the Applicants for the transfer of the cases to Nairobi are insufficient

COURT RENDERS ITSELF AS FOLLOWS:

[4] This is not a case where there is doubt as to the court by which the offences the Respondents are facing should be tried, and therefore section 76 of the CPC does not apply. The issue that has arisen is one of transfer of the subject criminal cases from Bungoma Chief Magistrate's Court to Nairobi Chief Magistrate's Court, which is of equal jurisdiction. The applicable section in this instance is 81 of the CPC. Under the law, on a matter of transfer of a criminal proceeding, the High court may move on its own initiative or on application of a party or on a report of the lower court under section 81 of the CPC.

[5] An order for transfer of a criminal proceeding will be made under section 81 of the CPC, where it appears to the High court that it is necessary for the satisfactory trial of the offence that:

- a) an order be made for the sake of general convenience of the parties or witnesses or
- b) that such order is expedient for the ends of justice.

[6] It is not in doubt the offences were committed in Nairobi and in particular at Nyayo House. It is also not in doubt that the witnesses in the criminal cases either resides or works for gain in Nairobi. It is only expedient that those witnesses are not put to great and unnecessary expense of time and physical fatigue by requiring them to travel all the way from Nairobi to Bungoma, over 500km apart. To allow such state of affairs to persist will not serve any useful or particular purpose in administration of justice or for the court, prosecution or the accused persons. It is more fit that the cases are tried at Nairobi rather than Bungoma.

[7] For the convenience of the parties and the witnesses, and for the ends of justice in those criminal cases, I hereby order that BGM CM CRC No.2294 of 2012, and BGM CM CRC No 2295 of 2012 be transferred to Nairobi Chief Magistrate's Court at Milimani for hearing and disposal.

Dated, signed and delivered in open court at Bungoma this 20th day of March, 2013

F. GIKONYO
JUDGE

In the presence of:

Bworonga for Situma for accused persons

Kibelion for State
Ruling read in open court.

F. GIKONYO
JUDGE