



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Criminal Miscellaneous Application 10 of 2010

DOUGLAS MURIUKI MBURUGU APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant filed a Notice of Motion dated 21st April 2010 brought under Section 81 of the Criminal Procedure Code. The application seeks the transfer of Meru Chief Magistrate Criminal Case No. 277 of 2010 to Chief Magistrate Court in Mombasa. In the affidavit annexed to the application, the applicant has deponed thus:-

3. *That I am charged with three similar counts namely:-*

(i) *Obtaining money by false pretences C/Section 313 of the Penal Code.*

4. *That the alleged crimes took place within Mombasa which is Coast Province where I operate from since I live there.*

5. *That I operate an account No. 01109225134900 Co-operative Bank Nkuruma Branch*

Mombasa and its through my account that the complainant deposited the monies from Co-operative Bank Meru Branch.

6. *That its even evident from the charge sheet that my address is within Mombasa urban.*

7. *That it will be convenient for myself and witnesses if this matter was to be heard at Mombasa Law Courts, since even all the documentations at Mombasa port, and the transactions took place at Mombasa.*

8. *That I am occasionally receiving threats from the complainant that I will be imprisoned, which threats make me apprehensive that the complainant are already or already know the outcome even before we are heard.*

The application was opposed by the state. The state submitted that the applicant had not demonstrated that the Meru Chief Magistrate Court would be biased against him. That although the applicant received the complainant's money in Mombasa, that money had been deposited in Meru. The learned state counsel therefore said that the offence was a continuing one. That it can therefore be tried in Meru and Mombasa. The learned state counsel said that it is presently part heard before the Meru Chief Magistrate Court and there

was no prejudice that would be suffered by the applicant if it proceeded in the same court. Section 81 (1) provides as follows:-

“81. (1) Whenever it is made to appear to the High Court –

- (a) that a fair and impartial trial cannot be had in any criminal court subordinate thereto; or**
- (b) that some question of law of unusual difficulty is likely to arise; or**
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or**
- (d) that an order under this section will tend to the general convenience of the parties or witnesses; or**
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Code,**

it may order –

- (i) that an offence be tried by a court not empowered under the preceding sections of this part but in other respects competent to try the offence;**

The applicant faces three counts of obtaining money by false pretences contrary to section 313 of the Penal Code. The particulars of the offence shows that on diverse days the applicant obtained various sums from the complainant:-

“.....at Meru township in Meru Central District within Eastern Province.....”

From those particulars, it is clear that the prosecutions case is that the offences were committed within

Meru Township. That being so, and bearing the provisions of section 81 in mind, the applicant has failed to show that Meru Chief

Magistrate court will be biased against him. As stated by the learned state counsel, this case is now part heard before the Chief Magistrate

Court Meru. There is no basis to order the transfer of the case to Mombasa. The Notice of Motion dated 21st April 2010 is without merit and is dismissed.

Dated and delivered at Meru this 18th day of June 2010.

MARY KASANGO
JUDGE