

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Miscellaneous Application 17 of 2010

RAMADHAN SALIM SHABAN.....APPLICANTS

ROBERT OGARE.....APPLICANTS

VS

REPUBLIC.....RESPONDENT

RULING.

This is a ruling on an application for transfer of Bungoma CM Criminal Case No.405 of 2009 to Busia. The Applicants are the accused persons in that case. The case originated from Busia Court. It was transferred to Bungoma Court by Mr. E. Obaga SPM, Busia for the reason that being the only magistrate who was competent to hear the case in the station he was hearing yet another case of similar nature facing the accused persons. The reasons given in the application are that it will be more convenient to have witnesses who are all from Busia to testify at Busia court. The Appellants allege that they have been unable to access documents in the hands of the Busia Police including witness statements and charge sheets due to the distance involved. The case was transferred without the consent of the Applicants. The 1st Applicant said he is sickly being HIV positive and needs help from his relatives who are living in Busia.

The state opposed the application on grounds that a Bungoma court hearing the matter can still visit the scene of crime at Busia if need be and that witnesses will be summoned to come to Bungoma. The State Counsel, Mr. Ogoti submitted that Mr. Obaga has another case before him and is the only competent magistrate who can hear the case.

I have perused the lower court file and find that the case was transferred to Bungoma CM court in 2009. It was heard by one Sogomo G. Senior Resident Magistrate who later went on transfer. The succeeding court ordered that the case starts afresh. The case is yet to commence being heard as we stand.

It is always in the interests of justice that a case is heard and disposed of in a court situated in the area that the incident leading to the case took place. This is economical in way of cost and time and convenient to both the accused persons and the prosecution. The application have several other ground in their affidavit which I agree make sense in the endeavour to have this case transferred. This is a case which has delayed due to the transfer of the trial magistrate and in view of the order to start it "*de novo*" more time is likely to be spent in the fresh hearing at Bungoma as opposed to Busia where the witnesses are living.

I have been reliably informed that Busia now has another magistrate other than Mr. Obaga who has jurisdiction to hear the case. He is a Senior Resident magistrate by rank. For the foregoing reasons and for the need for expeditious disposal of this case, I hereby allow the application. I therefore order that Bungoma CM

Criminal Case No.405 of 2009 be and is hereby transferred to Busia SPM Court forthwith. To be heard by a magistrate of competent jurisdiction other than Mr. E. Obaga Senior Principal Magistrate.

The Applicants shall be remanded at Busia G. K. Prison pending the disposal of the case.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered in open court in the presence of the Applicants and the State Counsel Mrs leting on the 17th day of June, 2010.

F. N. MUCHEMI
JUDGE