REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

Criminal Revision 26 of 2009

SHABBIR ALI JUSAB…….1ST APPLICANT

YASSIN ALIMAMED JUSAB……2ND APPLICANT

VERSUS

REPUBLIC……RESPONDENT

R U L I N G

This is an application for revision under section 362 of the Criminal Procedure Code. That section gives a discretion to the High Court to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

The application originates from Criminal Case No. 1842 of 2009 in the Chief Magistrate's Court at Kibera. The applicants, who are the 2 accused persons in that case, are jointly charged with two counts of attempted murder contrary to section 220 (a) of the Penal Code, and wounding with intent to disfigure contrary to section 231 of the Penal Code. The applicants' case is that they are opposed to their trial at Kibera Law Courts and seek a transfer of their case to the Chief Magistrate's Court at the Central Law Courts, Nairobi. On the face of the record, their application is based on the twin grounds that the Kibera Law Courts are devoid of the requisite territorial jurisdiction, and that they are also apprehension that they will not got a fair and expeditious trial at Kibera.

During the hearing of the application, Mr. Kinyanjui appeared for the applicants while Ms Gateru appeared for the State. In his submission, Mr. Kinyanjui made it clear that all the object of the revision would be adequately served if this court adjudicated on the issue as to whether it is the Kibera Chief Magistrate's Court, or the Central Law Courts Chief Magistrate's Court which by law, ought to hear criminal cases originating from the Parklands are of Nairobi.

He referred to section 76 (1) of the Criminal Procedure Code and submitted that such cases ought to be tried at the Central Law Courts. On her part Ms Gateru cited Sections 72 and 76 (1) of the Criminal Procedure Code and submitted that an offence in Nairobi need not be tried at the nearest court, and that there was no doubt that Kibera Law Courts had jurisdiction to try this matter.

Going back to the very beginning, I note that the Resident Magistrate's Court was established under Section 3 (1) of the Magistrate's Courts Act, Cap 10 of the Laws of Kenya, and that it is properly constituted when held by a chief magistrate, a senior principal magistrate, a principal magistrate, a senior resident magistrate, or a resident magistrate. Subsection (2) of that section confers the Resident Magistrate's Court jurisdiction throughout Kenya. However, Section 4 of the said Act is explicit that the Resident Magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on it by the Criminal Procedure Code; or any other written law. This brings into play Section 72 of the Criminal Procedure Code which is in the following terms –

"***When a person is accused of the commission of an offence by reason of anything which has been done or if any consequence which has ensued, the offence may be tried by a court within the local***

limits of whose jurisdiction the thing has been done or the consequence has ensued."

It is noteworthy that while the section uses the phrase "***local limits***" it cleverly avoids any definition thereof. The Kibera Law Courts and the Central Law Courts are both in Nairobi, and in the absence of a clear delineation of their territorial jurisdiction I would apine that, ideally, each of those courts has jurisdiction to try an offence committed anywhere within Nairobi. However, it should never be last on us that section 72 uses the phrase ".. ***may be tried by a court within local limits of whose jurisdiction the thing has been down*** …" Even though the best practice would be for a case to be tried at the court nearest where the offence was committed, the introduction of the word "***may***" in that section clearly means that it could legitimately be tried elsewhere. The choice of the is discretionary, but not mandatory. For this reason, I find that there was no impropriety in trying this case at Kibera, and that of the trial court is not mandatory, but only discretionary the Kibera Court has jurisdiction to do so.

Since this was the only issue which the applicant's counsel wanted to be determined, I do not wish to add that all interested parties would also assist a lot if they co-operated in a bid to ensure a smooth and expeditious disposal of this matter.

Dated and delivered at Nairobi this 23rd day of July 2009.

L. NJAGI

JUDGE

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