



**REPUBLIC OF KENYA**  
**HIGH COURT AT BUNGOMA**

**misc appl 13 of 04**

**REUBEN S. NDARA ..... APPLICANTS**

**VS**

**REPUBLIC ..... RESPONDENT**

**RULING**

Benard B' Sigowo and Reuben Ndara, the applicants herein took out a motion pursuant to Section 81 (3) and (4) of the criminal procedure code and prayed to this court to inter alia withdraw and transfer Sirisia Resident Magistrate's Criminal case No. 546 of 2003 from Sirisia Resident Magistrate's court to the Principal Magistrate's court at Bungoma. The motion is supported by the affidavit sworn by Benard B'Sigowo dated 28th April 2004.

When the motion came up for interpartes hearing the applicants' advocate only raised one ground in support. His main argument is that the offence is said to have taken place at Mt. Elgon District where there is no court and that the most accessible court is Bungoma and not Sirisia. He argued that the applicants would be inconvenienced if the case is heard at Sirisia.

The learned Senior state counsel opposed the motion by stating that the applicants had disclosed no sufficient reason. He further submitted that the applicants had not disclosed the full particulars of the case they seek to have withdrawn and transferred to Bungoma. The applicants essentially are seeking to benefit from this court's discretionary powers donated by Section 81 of the criminal procedure code. However this section sets the conditions which must exist to enable this court freely exercise the discretion as follows:

- (a) If a fair and impartial trial cannot be heard or
- (b) If a question of law of unusual difficulty is likely to arise or
- (c) If 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. A cursory look at the motion reveals that none of the above criteria has been met. The applicants have not set out the nature of the offence facing them before the Resident Magistrate's court, Sirisia. The failure to lay down the basic foundation of the criminal case before the trial court renders the whole motion incompetent and unmeritorious.

The upshot therefore is that this motion must fail. It is dismissed with not order as to costs.

**DATED AND DELIVERED THIS 30th DAY OF July 2004**

**J.K. SERGON**

**JUDGE**

