

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPLICATION NO. 121 OF 2004

(From original conviction and sentence in Criminal Case No. 3160 of 2003 of the Principal Magistrate's Court at NAIVASHA)

HOSEA KIBIWOTT BARGOYET.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

The applicant is the accused in Criminal Case No. 3160 of 2003 at Naivasha Law Courts where he is facing a charge of obtaining by false pretences contrary to Section 313 of the Penal Code.

The particulars of the charge are that on 8/12/2003 at Gilgil Town in Nakuru District of the Rift Valley Province, jointly with others not before court, with intent to defraud, obtained from Simon Kiprotich Kemboi the sum of Kshs.520,000/- by falsely pretending that they would sell a tractor registration number KAG 952C Mersey Ferguson to the said Simon Kiprotich Kemboi. The applicant has now filed an application by way of a Notice of Motion under Section 81(1) Rules (c), (d), (e) (ii) and (2) of the Criminal Procedure Code seeking a transfer of the said case from Naivasha Law Courts to Eldoret Chief Magistrate's Court.

The grounds under which the application was made are that the accused and all the witnesses are residents of Eldoret and it would be unduly expensive for them to keep on traveling to Naivasha whenever the case comes up for hearing or mention.

The application was not opposed by the prosecution. Under section 81(d) of the Criminal Procedure Code the court can grant such a prayer as sought herein if the order will tend to the general convenience of the parties or witnesses. It would not be in the interest of justice to have the accused and witnesses travel long distances for the hearing of the case. That would be expensive and may also cause delay in the finalisation of the matter.

For these reasons, I allow the application and order that Naivasha Criminal Case No. 3160 of 2003 be transferred to Eldoret Chief Magistrate's Court for trial and disposal.

DATED, SIGNED & DELIVERED at Nakuru this 26th day of November, 2004.

DANIEL MUSINGA
AG. JUDGE
26/11/2004