



**DPP v Mohamed & another (Criminal Revision E004 of 2025)
[2025] KEHC 6616 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL REVISION E004 OF 2025**

JN ONYIEGO, J

MAY 22, 2025

BETWEEN

DPP APPLICANT

AND

MOHAMED SAMOW MOHAMED 1ST RESPONDENT

ISAIAH KAKUKO LONGOMO 2ND RESPONDENT

RULING

1. The respondents herein were charged with aiding a prisoner to escape contrary to Section 124 (a) of the *Penal Code*. The particulars were that on the 14th day of February, 2025 at Elwak police station in Madera Central Sub county within Mandera County, they jointly aided a prisoner namely; Muse Muhumed Abdulle to escape from lawful custody at Elwak police station cells.
2. The respondents pleaded not guilty to the charge. Before the matter could proceed to hearing, prosecution informed the trial court of its intention to have the case transferred to Kahawa law courts for hearing.
3. Consequently, prosecution/applicant moved this court vide a notice of motion filed on 5th day of March, 2025 seeking orders; -
 - i. That this application be certified as urgent and be heard on priority basis.
 - ii. That this Honourable court be pleased to issue a stay of proceedings in Mandera (MCCR E007/2025) *Republic v Muse Mohamed Abdille and another* before Hon. C. Omondi, RM pending hearing and determination of this application.
 - iii. That this Honourable court be pleased to order for the transfer of criminal case Mandera (MCCR/E007/2025) *Republic v Mohamed Samow Mohamed & Isaiah Kakuko Longomo*



from Mandera Senior Principal Magistrate's Court to another with similar jurisdiction in Kahawa, Nairobi.

- iv. That this Honourable court be pleased to issue any other orders that it may deem fit and just in the circumstances.
4. The application is based on the grounds set out on the face of it and further amplified by the content contained in the supporting affidavit sworn by CI Peter Kaibiru on 5th day of March 2025. It was averred that the respondents are well connected with the Alshabaab militants; that they aided the escape of a suspect considered to be a high target terror suspect with sophisticated links with Alshabaab; that the said Alshabaab militants can go to any extent to frustrate court proceedings in Mandera hence prudent to have the matter heard in Nairobi; that pending of the case in Mandera may jeopardise further investigation and arrest of more suspects; and that owing to the proximity of Mandera to the porous borders, it was risky to hear the case in Mandera.
5. The respondents who appeared in person did not file any response. During the hearing Prosecution counsel merely adopted the content contained in the affidavit in support of the application. The respondents basically urged the court to hear their case in Mandera law courts.
6. I have considered the application herein together with the response thereof. Prosecution is seeking transfer of this case from Mandera law courts to Kahawa law courts being a court designated in Nairobi to hear terrorist related matters. It is contended that the respondents are well connected with high risky criminals in the name of Alshabaab some of whom they assisted to escape.
7. The respondents opposed the application thus urging the court to hear their case in Mandera law courts. They further urged the case to be heard faster since they are in custody.
8. The power conferred upon the high court for revision and transfer of a criminal case from one court to another is conferred by both the [constitution](#) Article 165 (6) and (7) and Section 81 of the [CPC](#).

Section 81 the [CPC](#) provides as follows;

“ 81. Power of High Court to change venue

- (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;
 - (ii) that a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;
 - (iii) that an accused person be committed for trial to itself.
- (2) The High Court may act on the report of the lower court, or on the application of a party interested, or on its own initiative.
 - (3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Director of Public Prosecutions, be supported by affidavit.
 - (4) An accused person making any such application shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of notice and the hearing of the application.
 - (5) When an accused person makes any such application, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor."
9. Section 71 of the CPC does provide for territorial jurisdiction of a criminal case trial. For avoidance of doubt, I wish to reproduce the said section as hereunder;
- “71. Ordinary place of inquiry and trial
- Subject to the provisions of section 69, and to the powers of transfer conferred by sections 79 and 81, every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence”.
10. The best test to apply to determine whether grounds exist to have a case transferred from one court to another was espoused in the Court of Appeal case of Kinyatti v Republic [1985] KLR 562 where it was held that:
- “In deciding whether or not to transfer a case from one court to another, the test was whether the appellant had made out a clear case by discharging on the balance of probabilities the burden of showing that the apprehension in his mind that he may not have a fair and impartial trial is of a reasonable character.



The test was whether the apprehension in the mind of the applicant/accused that he may not have a fair and impartial trial before the Chief Magistrate was of a reasonable character regardless of the fact that there may be no unfair or partial or biased trial in the matter. That was the test the trial magistrate ought to have applied.”

11. The respondents are charged with aiding the escape of a prisoner from police cells. This an offence under the penal code. It is not an offence committed under the *prevention of terrorism Act*. Under Section 71 of the *CPC*, the court with original jurisdiction to try the matter in question is Mandera law courts. None of the circumstances stated in Section 81 have been demonstrated to justify transfer of the case in question to Kahawa.
12. Kahawa law courts was established as a special court to hear matters relating to terrorism arising within Nairobi and its environs. Magistrate’ Courts in North Eastern region have been hearing terrorism related cases without any objection. I do not see anything special to justify the transfer of this case to Kahawa in Nairobi. To do so will be akin to disenfranchising the accused persons their right to a fair trial as enshrined under Article 50 of the *constitution* and the *judiciary blue print on the social transformation through access to justice*(STAJ) which envisages taking justice closer to people.
13. To transfer a case from Mandera to Nairobi 1200kms away will amount to denying the accused persons justice as it will be extremely expensive to attend trial without undue inconvenience and expense. Mandera court has the jurisdiction and competence to try the case. I do not find any merit in the application. The alleged fear by the prosecution is mere speculative hence not tenable. Accordingly, the application is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

