



**Republic v Okonya (Miscellaneous Criminal Application
5 of 2024) [2024] KEHC 4700 (KLR) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION 5 OF 2024**

WM MUSYOKA, J

MAY 6, 2024

BETWEEN

REPUBLIC APPLICANT

AND

CARLBENZ OKONYA RESPONDENT

RULING

1. The file, in Busia CMC SO No. E117 of 2023 (Republic vs. Carlbenz Okonya), has been placed before me, by the Chief Magistrate, Hon. EA Nyaloti, CM, who has been handling it, vide a letter dated 25th April 2024, seeking directions on how the same should be handled.
2. It was last before Hon. Nyaloti, CM, on 24th April 2024, when she recorded that she could not proceed with the matter that day, following threats and intimidation that she had received, and because of personal attacks on her. She then fixed the matter for mention on 5th June 2024. The alleged threats, intimidation and personal attacks are detailed in the letter, and a background given of the matter, right from 26th September 2023, when plea was taken. The offence was allegedly committed within Bunyala, Busia County, and the charge was filed at the court at Port Victoria. The court at Port Victoria did not handle it, in terms of having the accused arraigned there for plea-taking, as threats had been allegedly directed at the presiding magistrate there, Hon. Karimi Njeru, Senior Resident Magistrate, who referred the matter to the Busia Chief Magistrate’s court. At Busia, the file was placed before Hon. Kassim Adika, Resident Magistrate, RM, who was prepared to preside over plea-taking process, as the duty court, but it transpired that a group of people, allegedly allied to the accused, was allegedly holding a meeting, at an office within the court precincts, just next to the Chambers of Hon. Adika, RM, ostensibly to raise money to have him influenced, to admit the accused to favourable bond terms. Hon. Adika, RM, became uncomfortable with handling the matter, as a result. The file was then referred to the Chief Magistrate, and that was how it ended up with Hon. Nyaloti, CM.



3. Given that background, and from what I know of the matter from an administrative standpoint, I believe that it has become no longer tenable, nor convenient, to have it handled from Busia. I am persuaded that the security of the judicial officers handling it can no longer be assured. It would be in the best interests of justice that the matter is handled from elsewhere, outside of the Busia County.
4. The Constitution, at Article 165(6)(7), empowers the High Court to call for the record of any proceedings before a subordinate court, and it may thereafter make any order or give any direction, including in the record of that trial court, as may it consider appropriate, to ensure the fair administration of justice. The circumstances of the instant trial merits exercise of the constitutional discretion given to the High Court, by those provisions, to have the matter transferred to another jurisdiction for trial. The power to transfer criminal proceedings, from one trial court to another, is granted by section 81 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
5. I shall accordingly, in exercise of the provisions of the Constitution and the Criminal Procedure Code, cited above, order that the criminal case herein be transferred to the Chief Magistrate's Court at Kakamega for trial. I shall leave it to that court to decide, on the basis of section 200 of the Criminal Procedure Code, whether or not to proceed with the trial from where Hon. Nyaloti, CM, left off, or to start *de novo*. The matter has a date for mention, on 5th June 2024. Let that mention happen before the Chief Magistrate at Kakamega. Before the file is transferred to Kakamega, let the proceedings herein be typed, and the typed record certified. Let the Deputy Registrar cause a certified copy of this ruling to be availed to all the parties affected. It is so ordered.

DELIVERED BY EMAIL, AND DATED AND SIGNED IN CHAMBERS AT BUSIA THIS 6TH DAY OF MAY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Mumo, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Okutta, Mr. Makokha and Mr. Ouma, instructed by Messrs. Ouma Okutta & Associates, JP Makokha & Company and BM Ouma & Company, Advocates for the accused.

