



**Vekaria t/a Ukunda Mpya Hardware Shop v Inspector General of the National Police Service & another; Nathalal (Interested Party) (Miscellaneous Criminal Application E205 of 2022) [2023] KEHC 1989 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1989 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E205 OF 2022**

**A. ONG'INJO, J  
FEBRUARY 2, 2023**

**BETWEEN**

**NARAN PREMJI VEKARIA T/A UKUNDA MPYA HARDWARE SHOP ..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HIRANI BHUPENDRA NATHALAL ..... INTERESTED PARTY**

**RULING**

1. By an Application dated September 5, 2022, the Applicant sort that Makadara Chief Magistrates Court CR Case No 1095 of 2020 be transferred to Mombasa Chief Magistrate Court for hearing and determination for reasons that the cause of action arose in Ukunda within Coast Region and that he was the Complainant.
2. The Application is supported by the Affidavit of the Applicant sworn on September 5, 2022.
3. This Court ordered that each should be provided with certified copies of the proceedings in Makadara CR Case 1095 of 2020 and it was established that so far the Applicant and other witnessed had already testified. This Application was opposed by the replying affidavit of the interested parties sworn on December 5, 2022. The interested party averred that the application is being used to deceive the court and that the applicant has come to court with unclean hands as they fail to disclose that they had already testified. The interested parties also averred that the application and orders has not been served on the



- trial court in Makadara and that the applicants have not explained why they want the matter to be heard in Mombasa if the cause of action arose in Ukunda.
4. The respondents did not file a response opposing the application but on February 7, 2023 Mr Ngiri for the 2<sup>nd</sup> respondents submitted that he had confirmed that the applicant and other witness had already testified in the trial in Makadara Court. He was of the view that the Applicant would attend the court virtually to save on transport costs.
  5. Directions were taken that the application was to be canvassed by way of written submissions and it is only the applicants to file submissions on February 14, 2023 to the effect that the investigating officers based in Nairobi had not had a chance to see the premises or the place where the offence was committed and that the employee and other witnesses were not interviewed. That because of the distance the complainant arrived in Nairobi and took the witness stand without a pre-trial conference with the prosecuting counsel and as such it is clear that an injustice is being occasioned and shall be occasioned due to the distance. It was further submitted that the remaining witnesses will have to incur expenses if they are to go to Nairobi for trial and the 2 witnesses whose statements were not taken may not get the opportunity to testify.
  6. Mr Magolo Advocate for the Applicant argued that offence committed in Ukunda and that the High Court in Mombasa has the jurisdiction to transfer the matter from Nairobi. He said that distance had made it difficult for consultation between the applicant and the DPP as well as the DCIO in Nairobi and as a result there are no witnesses expected from the bank yet cheques are issued. That if the transfer is not allowed the end result is a mockery to justice. He said that the suspects should be acquitted only after a proper free and fair trial.
  7. This court has considered that the application seeking that the trial in Makadara CR Case 1095 of 2010 be transferred to Mombasa Chief Magistrate Court on account that Applicant and witnesses have to travel to Nairobi for the matter and that is very expensive and find that the Applicant and 1 witness having testified it will not be necessary for them to travel again to Nairobi during the hearing of the case against the interested party. The remaining 2 witnesses should have their travelling expenses reimbursed by the court on application of the prosecuting counsel and in the alternative arrangements can be made for their testimonies to be taken virtually. The application is therefore dismissed with no orders as to costs. Deputy Registrar to serve this order on the trial Magistrate in Makadara.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 2<sup>ND</sup> DAY OF FEBRUARY 2023.**

**HON LADY JUSTICE A ONG'INJO**

**JUDGE**

**In the presence of:-**

**Ogwel- Court Assistant**

Appellant – Present in person

Mr Ngiri for State - Present

Mr Paul holding brief for Mr Magolo Advocate for Applicant

Mr Nyamu for the interested parties - Present

**Hon Lady Justice A Ong'injo**

**Judge**

