



**Republic v Ombiro & another (Miscellaneous Application E004 of 2024)  
[2024] KEHC 14569 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14569 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS APPLICATION E004 OF 2024  
TA ODERA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**EVANS MANYARA OMBIRO ..... 1<sup>ST</sup> RESPONDENT**

**CNJ ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Hon. Mugendi Nyaga Principal Magistrate, Etago Law Court vide a ruling dated 11<sup>th</sup> September, 2024 in Criminal Case E218 of 2024 Republic vs Evans Manyara Ombiro ordered the forwarding of the said file to this court to exercise its jurisdiction under section 81 of Criminal Procedure Code transfer the same from Etago Magistrate’s Court to another Magistrate Court of competent Jurisdiction for trial.
2. The ruling resulted from an oral Application made before the said court by the learned prosecution counsel at Etago seeking to disqualify himself from prosecuting the matter and to have the same transferred to Kisii Magistrate Court citing lack of co-operation from the investigating officer and a threat to his own security. The learned prosecution counsel informed the said court that from the time the accused persons was arrested he noted that the 1<sup>st</sup> Accused person was released for unknown reasons. The learned counsel also revealed that the 2<sup>nd</sup> accused person had made a confession to him regarding the case which confession he wanted recorded by the investigating officer but the investigating officer was not cooperative. He felt that as a result of the un-cooperative nature of the investigating officer, he could not effectively prosecute the matter. Further the prosecution counsel equally raised concern of his own security and was not ready to share more information on the same with the court.
3. I have considered the ruling of the learned Magistrate in this matter as well as the concerns raised by the learned prosecution counsel that necessitated the Ruling and the sentiments of accused no.1



who opposed the recommendation of the Hon. Nyaga on the grounds that his family will not be able to access him if the case is transferred to Kisii Chief Magistrate's Court. The 2<sup>nd</sup> accused who is a minor is alleged to have escaped from Manga remand home in September 2024 and the case is pending investigations. He thus did not participate in these proceedings. I will state at this point that the issue of the investigating officer being uncooperative with the prosecutor is not for consideration by this court as this is an issue which can be sorted out administratively between the Office of the Director of Public Prosecutions and the Directorate of Criminal investigations at the sub county, county and even National levels for an amicable settlement.

4. The power of this court is to transfer criminal cases from one court to the other is conferred by section 81 of the Criminal Procedure Code, Cap 75, and in the exercise of this power, the court may change venue of the hearing of a case suo moto, or on application of a party interested or on the report of the lower court. In this case the main ground cited for transfer of this case is threat on security of the only prosecutor they have in Etago Law Court. Security of every person is paramount and this Court has a duty to protect security of every citizen including prosecution counsel who are officers of this Court. This Court cannot take the issue of the said threats lightly.
5. Therefore, in the interest of justice, I proceed to invoke the provisions of section 81 of the Criminal Procedure Code and direct that Criminal E218 of 2024 be and is hereby transferred to Kisii Magistrate's Court for hearing and determination. The matter shall be mentioned before the Chief Magistrate Kisii Law Courts on 19<sup>th</sup> November, 2024 for re-allocation and further orders.
6. This file is closed.

**T.A ODERA**

**JUDGE**

**14.11.24**

Delivered virtually via teams platform in the presence of:

Koima for Prosecutor

Evans Manyara - Present

Court Assistant - Oigo

