



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.332 OF 2019

HALIMA ADAN ALLI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Halima Adan Ali is facing three charges under the **Prevention of Terrorism Act 2012** before the **Milimani Chief Magistrate's Court (Criminal Case No.1262 of 2018)**. She has pleaded not guilty to the charge. From the submission made before court, the court understood that the trial is yet to commence. On 24th June 2014, the Applicant made an application before this court seeking to have the venue of trial to be transferred from the Chief Magistrate's Court Nairobi to the Chief Magistrate's Court Mombasa. The grounds in support of the application are stated on the face of the application and the annexed affidavits of the Applicant. The Applicant contends that she has been subjected to extreme hardship by the choice of venue to conduct the trial.

The Applicant states that she is a resident of Mariakani in Kilifi County. She depones that she has been subjected to financial hardship when she is required to appear before the court at Nairobi. It has been expensive and costly for her to constantly shuttle between Mombasa and Nairobi for the trial of her case. She was of the view that her friends and relatives who would, in the circumstances, offer her social support have been denied the opportunity to attend the trial due to added cost that have been imposed by the decision of the prosecution to charge the Applicant in Nairobi instead of Mombasa. The Applicant pointed out that she had been previously charged by the prosecution in another criminal case in Mombasa where she was acquitted after trial. In essence, the Applicant is pleading with the court to consider her situation and order that the venue of trial be transferred from Nairobi to Mombasa. It was the Applicant's contention that there was no reason, both in fact and in law that prevents the trial of the Applicant from being heard and determined at Mombasa's Chief Magistrate's Court.

The application is opposed. Sgt Geoffrey Busolo, an officer based at the Anti-Terrorism Police Unit and one of the investigators in the case swore a replying affidavit in opposition to the application. He deponed that the offence was committed while the Applicant was in Nairobi. He pointed out that there was an international element to the charges facing the Applicant since some of the prosecution witnesses expected to testify during trial are foreigners. He swore that the decision to charge the Applicant in Nairobi was not motivated by any other factor other than the convenience of the trial venue which is Nairobi. The investigator explained that the Applicant previously made an attempt to have the case transferred to Mombasa even before plea was taken. He was of the view that the Applicant had presented no tangible reason to have the venue of the trial changed from Nairobi to Mombasa.

During the hearing of the application, this court heard oral rival submission made by Mr. Chacha for the Applicant and Mr. Kiarie for the prosecution. Apart from citing decided cases, learned counsel essentially reiterated the contents of the application and the affidavits filed herein. That this court has jurisdiction to change the venue of trial in a criminal case is not in doubt. **Section 81** of the **Criminal Procedure Code** states thus:

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.”*

In the present application, it was evident that the Applicant was invoking the provisions of **Section 81(1)(c) & (d)** of the **Criminal Procedure Code** in support of her application. The Applicant contends that she would be subjected to hardship and considerable financial expenses if the venue of the trial is not transferred from the Nairobi Chief Magistrate’s Court to Mombasa Chief Magistrate’s Court. Although the Applicant argued that the alleged incident that led to the charges being laid against her occurred in Mombasa, the prosecution on their side reiterate that the alleged incident occurred while the Applicant was in Nairobi.

To further throw the spanner in the works, the prosecution content that the charges brought against the Applicant have an international element which will require witnesses to be procured from outside the country. The Applicant is of the contrary view. She annexed copies of the witnesses statements that were served on her which in her opinion debunks the prosecution’s contention that some of the prosecution witnesses will be procured from outside of the country. The Applicant contends that all the prosecution witnesses are resident within Kenya.

This court’s evaluation of the facts placed before this court leads it to the conclusion that the Applicant has not made a case for this court to order a change of venue of the trial. In majority of cases, it is a legal requirement and it is good practice for the charges brought against those accused to be filed within the jurisdiction of the court where the offence was committed unless there are reasons that militate against such charges being brought in such venue. In the present application, the prosecution contends that the Applicant committed the alleged offences in Nairobi hence the prosecution’s decision to charge the Applicant in Nairobi.

On the other hand, the only reason why the Applicant wants the case to be transferred to Mombasa Chief Magistrate’s Court is the anticipated hardship and financial implication that would be required of her when travelling to and from Mariakani in Kilifi County to attend trial. Whereas this court agrees with the Applicant that there are certain instances where the convenience of the accused may be a factor in determining the venue of trial, this court has not been persuaded in the circumstances of this case that the Applicant will suffer such financial hardship that she will be unable to attend court. The Applicant has not placed any justifiable reason before this court that will persuade the court to change the venue of trial.

In the premises therefore, this court holds that the Applicant’s application seeking the transfer of venue of trial lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 6TH DAY OF NOVEMBER 2019

L. KIMARU

JUDGE