



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

PETITION NO. 13 OF 2015

ISAAC RODROT.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATION

DEPARTMENT.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE..... 3RD RESPONDENT

THE HON. ATTORNEY GENERAL..... 4TH RESPONDENT

AND

MABROOK MOHAMUD BILALI..... 1ST INTERESTED PARTY

MINYO KEA..... 2ND INTERESTED PARTY

ANDERSON LIMO CHOMBO..... 3RD INTERESTED PARTY

RULING

The application dated 9th November, 2015 seeks two substantive orders. It seeks to have Hans Juergen Langer enjoined as an interested party in these proceedings and to have this petition transferred to the High Court in Nairobi for hearing and determination. The first prayer was granted by this court on 2nd December, 2015. What remains is the request to have the petition transferred to Nairobi.

Mr. Obaga, counsel for the interested party relied on the application. Counsel contends that the alleged crime occurred in Nairobi and not Kilifi. The locus quo is where the offence occurred. This enables the witnesses to attend court with ease. The petitioner is a resident of Nairobi and will not suffer any prejudice.

Mr. Fedha, prosecuting counsel, on behalf of the first respondent supports the application. Miss Lutta, state counsel, for the 4th respondent left the issue to the court.

Mr. Masika, counsel for the petitioner, opposed the application. Counsel maintains that the alleged offence relates to Salama Beach Hotel which is based in Malindi. The petitioner is based in Malindi. The interested party lives in Malindi. The interested party is only a witness and cannot dictate the place whether the petition is to be heard. The other interested parties are also based in Malindi.

The petition herein was filed on 28th September, 2015. The applicant herein was enjoined as an interested party. The petition was accompanied by an application dated 28th September, 2015. That application has not been heard. The application seeks several prayers. One of the prayers is to have Criminal Case Number 775 of 2015 pending before the Milimani Commercial Court transferred to the Malindi Court. It appears that while canvassing on the application by the interested party to transfer the entire petition to Nairobi, counsels also addressed the issue relating to the criminal case: Mr. Obaga dwelt on the issue of the criminal case being heard in Nairobi as the offence took place in Nairobi. I do find that the prayer to transfer the criminal case from Nairobi to Malindi has been dealt with within the application by the interested party. The other prayers contained in the petitioner's application dated 28th September, 2015 can be dealt with separately. The application contains a request for the Chief Justice to constitute a bench of five judges to hear and determine this petition.

I have read the charge sheet for Criminal Case Number 775 of 2015 before the Milimani Court. The charge sheet indicate that the offence was committed on diverse dates at unknown place within Kenya. The witness statements are annexed to the petition. There is James Oliver Maganga. He states that he is contracted by the interested party. The interested party in his statement dated 24th January, 2015 indicate that he is a resident of Temple Point Resort. I believe this refers to Salama Beach Hotel in Watamu, Kilifi County. Another witness is Shariff Mohamed whose address is given as Watamu in Kilifi: Charity Katogo Kamau is from Nairobi but is an employee of Temple Point Resort doing Public Relations duties. The two counts in the charge sheet refers to Temple Point in Watamu.

Given the above information, I do find that the best place to hear the criminal case as well as the petition is in Malindi. All the issues being raised in the petition as well as in Criminal Case Number 775 of 2015 relates to Temple Point Hotel. The witnesses in the criminal case are employees of Temple Point Hotel. It is not clear why the statements of James Oliver and Charity Katago Kamau were recorded in Nairobi while the other statements were recorded in Malindi.

I have read the petition by the petitioner herein. I dealt with some of the issues in case Number Malindi HCCC No. 118 of 2009. The petition seeks several declaratory orders. Some of the prayers include what I dealt with in Civil Case Number 118 of 2009. I am aware that my ruling of 30th April, 2015 is the subject of an Appeal which is still pending before the Court of Appeal.

Having dealt with some of the issues raised in this petition, I do find that it will only be prudent if the petition can be dealt with by another Judge who shall decide on the request for empaneling of the bench or determine the petition alone. I have dealt with the matter and dealing with it again would be tantamount to re-hearing some of the issues. For the above reason, I hereby recuse myself from hearing the rest of the pending application by the petitioner as well as the petition. Parties shall decide whether to be heard in Garsen or Mombasa.

In the meantime, the interested party's application dated 9th November, 2015 seeking to transfer the petition to Nairobi is hereby dismissed. Criminal Case Number 775 of 2015 pending before the Milimani Court Nairobi is hereby transferred to the Malindi Chief Magistrate's Court for hearing and final determination. All the witnesses are based in Watamu and the case arises from Temple Point Hotel which is located in Watamu. The rest of the dispute shall be heard and determined by a different Judge or Judges. I hereby recuse myself from hearing this petition. Costs shall follow the outcome of the main petition.

Dated and delivered in Malindi this 6th day of April, 2016.

S. CHITEMBWE

JUDGE