

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 35 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

GILBERT MAINA & 2 OTHERS.....ACCUSED

RULING OF THE COURT

This matter was coming up for plea when the defence raised a Preliminary Objection stating that the plea be deferred and that the file be transferred to High Court in Kitui because that is where the alleged offence took place.

The defence team led by **Messers Cliff Ombeta, Mushoki and Mbugua** submitted that it is a matter of law that plea has to be taken in the High Court with jurisdiction, and that is the Kitui High Court.

They Cited **Section 78(1) of Criminal Procedure Code** which states that the trial would be conducted where the cause of action arose.

M/S Rono and **Mr. Machogu** for the State objected to that Preliminary Objection. The state team submitted that the accused person is a police officer in Kitui and that the matter is being investigated by police officers both in Machakos and in Nairobi and that there is a strong likelihood that if the trial is conducted in Kitui the accused will interfere with the police investigations.

I have carefully considered the Preliminary Objection raised by the defence team. I agree with the defence team that under the law the trial should indeed take place in Kitui High Court. However, due to objection by the state which also appears on the face of the record to make sense, I order and direct that the defence files a formal application objecting to plea in Machakos.

This will give the state an opportunity to clearly respond and state why they think the plea should be taken, and trial conducted, in Machakos and not Kitui High Court.

Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 4TH DAY OF OCTOBER, 2016

E.K.O. OGOLA

JUDGE

In the presence of;

Mr. Machogu for State

Mr. Mbugua and Kengata for accused

Court Assistant – Mr. Munyao