



**Kankentia & another v Republic (Criminal Miscellaneous Application 24A of 2024) [2025] KEHC 15323 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15323 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CRIMINAL MISCELLANEOUS APPLICATION 24A OF 2024**

**FR OLEL, J  
OCTOBER 24, 2025**

**BETWEEN**

**SAMUEL KANKENTIA ..... 1<sup>ST</sup> APPLICANT**

**LILIAN OBARE MUBUNDE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**A. Introduction**

1. The Application before this court for determination is the Notice of Motion application dated 30.09.2025 brought pursuant to provisions of Section 78 & 81 of the Criminal Procedure Code, Article 48 and 50 of the *Constitution* of Kenya 2010, and all other enabling provisions of law. The Applicants seek the following prayers;
  - a. Spent.
  - b. This Honourable court be pleased to review its ruling/order dated 11<sup>th</sup> December 2024 directing the transfer of the case against the Applicants from Moyale court to Marsabit law court.
  - c. That this matter be heard at a neutral and secure location other than Marsabit and, in the alternative, at Meru law courts, to safeguard the Applicant's right to fair hearing and personal security
  - d. Spent
  - e. That the court be pleased to issue such other or further orders be made as this honourable court may deem just and expedient in the circumstances.



2. The Application is supported by the grounds stated on the face of the said application and the supporting affidavit of the 1<sup>st</sup> Applicant, who deponed that the initial criminal case was filed in Moyale (MCCR/E129 of 2024), and on their Application, the same was transferred to the Marsabit court vide a ruling of the trial court dated 11<sup>th</sup> December 2024. The said transfer did not address their key concerns about their security and safety, and also compromised their ability to participate freely and fully in the said criminal case proceedings.
3. The applicant thus respectfully proposed that the criminal proceedings (Marsabit MCCR/009 of 2025) be retransferred to a neutral and secure location, such as Meru law courts, where their safety and impartiality of the court could be better secured. The application had been filed timeously, was merited, and they urged the court to grant the same.
4. The application was opposed by the respondent, through their replying affidavit dated 14<sup>th</sup> October 2025, sworn by Hussein Tulicha, the investigating officer. He did depone that the grounds raised were frivolous, as the applicants had not adduced any evidence to support their assertion that their security would be compromised if they attended court in Marsabit. It was also to be noted that the criminal case had proceeded on 13.10.25 in the presence of the Applicants and the complainants, who had testified on the said date.
5. The respondent thus urged the court to find that the said application lacked merit and be pleased to dismiss the same.

## **B. Analysis & Determination**

6. I have carefully considered the Application, its supporting affidavit, and the response filed thereto. The only issue that arises for determination is whether proper grounds have been advanced to have Marsabit MCCR /E009/2025 transferred to a different court outside Marsabit Jurisdiction.
7. Section 81 of the Criminal Procedure Code empowers the court to change the venue of trial upon proper grounds being advanced. It provided that;  
Power of the High Court to change venue
  - (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,
    - f. 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.
- (2) The High Court may act on the report of the lower court, or on the application of a party interested, or on its own initiative.
- 8. The applicant cannot be allowed to have two bites at the cherry. Their request to transfer the criminal case from Moyale to Marsabit was allowed, and hearing of the said suit commenced on 13<sup>th</sup> October 2025, in their presence. No untoward security incident was recorded. Further, the applicants seem to be forum shopping and have not sufficiently laid any cogent grounds, the basis upon which Marsabit MCCR E009/2025 should be transferred to Meru Chief Magistrates' court for hearing and determination.

**C. Disposition**

- 9. The Application dated 30<sup>th</sup> September 2025, therefore, lacks merit and the same is dismissed with costs to the Respondent.
- 10. It is so ordered.

**JUDGEMENT WRITTEN, DATED, AND SIGNED AT MARSABIT THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Teams the 24<sup>TH</sup> day of OCTOBER, 2025.

In the presence of;

N/A .....for Applicant

N/A .....for Respondent

Mr. Jarso .....Court Assistant

