



**State v Okoth alias Govins & another (Criminal Case E003 of 2025)
[2025] KEHC 455 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E003 OF 2025
DK KEMEL, J
JANUARY 27, 2025**

BETWEEN

STATE PROSECUTION

AND

VICTOR OUMA OKOTH ALIAS GOVINS 1ST ACCUSED

DUNCAN OCHIENG OBONG’O ALIAS OTUCH 2ND ACCUSED

RULING

1. Learned counsels Mr. Okango, Mr Soita and M/s Muema for the prosecution have urged this court to transfer this matter to Kisumu High Court for trial and determination. Learned counsels maintained that the learned Judge at Kisumu High Court who took plea had made orders suo motto transferring this case to this court. It was further contended that there is a related matter at Kakamega High Court where an accused had offered to enter into a plea bargain whereby he is expected to be a prosecution witness in this matter. It was further contended that Kisumu will be a central place for their large number of witnesses, some of whom are under witness protection.
2. Miss Odipo for both accused submitted that the Judge at Kisumu had made orders upon listening to all the parties. She was of the view that the prosecution should file a formal application for review of the orders made in Kisumu. Learned counsel added that the pre-bail report is yet to be filed so as to establish the issue of safety of the accused persons.
3. I have given due consideration to the brief submissions of learned counsels. It is not in dispute that the parties herein did make representations before Hon. Justice Aburili on 18/12/2024. It is also not in dispute that the learned Judge duly considered the rival arguments and came up with a considered and erudite ruling in which she ordered the matter transferred to this court. It is also not in dispute that the issues raised by the prosecution herein were substantially determined by Justice Aburili. It is also



not in dispute that the present application appears to be a disguise at seeking for review of the orders made on 18/12/2024.

4. As the issues were duly dealt with by Aburili J in her ruling dated 18/12/2024, i find the present application by the prosecution is akin to forum shopping. It was rather strange for the prosecution to claim that the Judge at Kisumu High Court had made the order suo motto when the true position is that all parties duly presented their views before the order was made. If the prosecution is uncomfortable with the orders of Aburili J and have now come across new matters which had not been placed before the court in Kisumu, then they ought to file an application for review of the orders at Kisumu High Court. It is noted that the offence was committed in Siaya and hence the matter should be heard in Siaya High Court. The issue of convenience of witnesses some whom are said to be based in Kisumu should not be of major concern since Siaya and Kisumu counties border each other and that the travel distance is not an issue at all. As regards the issue of safety of the accused persons, the pre-bail report is yet to be filed by the County Probation Officer and that in any case the issue of safety affects only matters to do with the release of accused on bail pending trial and not about the place of trial.
5. In view of the foregoing observations, i find that the prosecution's application lacks merit. The same is dismissed. Parties are now directed to proceed with the pre-trial conference so that the matter can begin in earnest for hearing.

DATED AND DELIVERED AT SIAYA THIS 27TH DAY OF JANUARY, 2025

D. KEMEI

JUDGE

In the presence

Victor Ouma Okoth.....1st accused

Duncan Ochieng.....2nd accused

M/s Odipo.....for accused

Miss Muema...

for Prosecution

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Mr. Onyango Watching brief for family of deceased

Ogendo.....Court Assistant

