



REPUBLIC OF KENYA



KENYA LAW
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**Njenga v Republic (Miscellaneous Application E313 of 2023)
[2024] KEHC 4352 (KLR) (Crim) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E313 OF 2023
LN MUTENDE, J
APRIL 25, 2024**

BETWEEN

ANTHONY MURIGI NJENGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Anthony Murugi Njenga the applicant, an accused person in Milimani Chief Magistrate's Criminal Case No. 515 of 2022 through a Notice of Motion dated 9th August 2023 seeks an order transferring the case to Mombasa Chief Magistrate's case for hearing and determination.
2. The applicant was charged with the offence of stealing. The particulars being that he stole Ksh 4,346,975 /= given to him for hiring lorries to transport balast to China Civil Engineering Construction Corporation LTD in Mombasa.
Upon arraignment, the applicant denied the charges and the matter is pending trial.
3. The application is premised on grounds that, the matter should be transferred to Mombasa where the offence occurred. The applicant is undergoing hardship and financial challenges while travelling from Mombasa to Nairobi. He has a challenge to get a surety in Nairobi since the complainant has colluded with the surety to withdraw from guaranteeing him. That the matter does not have a date after the file went missing on 1/8/2023. He is fearful that warrants of arrest may issue while he is in Mombasa. Further that the continuation of the case in Nairobi causes a great miscarriage of justice and violation to his right to fair hearing.
4. The application is supported by an affidavit deposed by the applicant where he reiterates what is stated in the grounds of the and application he further avers that bringing the case to Nairobi is meant to frustrate him as he is based in Mombasa.



5. The application is opposed by the respondent through grounds of opposition; it is argued that the applicant has not met the threshold for transfer provided under Section 72 of Criminal Procedure Code(CPC) and Sections 78 and 81.

That the offence occurred at Upper Hill Nairobi and there is no support of his allegation of conspiracy with the surety.

6. That the complainant is also based in Nairobi and the applicant was acting as an agent of the company. That the company in Mombasa was contracted to transport ballast and witnesses are within Nairobi county.

7. I have considered rival submissions. Section 81 of the Criminal Procedure Code gives the High court power to transfer Criminal cases from one magistrate to another. The court may be moved by parties as in the instant case and the court also has discretion to act suo moto. The provision of the law cited provides that:

- (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 an accused person be committed for trial to itself.

8. Section 72 of the CPC lists the place of trial providing that , a person accused of committing of an offence may be tried by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.

9. The charge sheet reads that the applicant was arraigned for the offence of Stealing by Agent contrary to Section 283 B of the Penal Code .It is particularized that ,on 7/6/2021 and 22/6/2021 at Upper Hill Nairobi the accused being an agent of Premium Movers Ltd stole Ksh 4,346,9875/= the property of Premium Movers Ltd received by him on account of hiring lorries to Transport Ballast to China Civil Engineering Construction Corporation Ltd in Mombasa County.

10. The complainant is registered and holds office in Nairobi county where the applicant received the money he is accused of stealing, The respondent has also submitted that the witnesses are based in Nairobi .The matter was also investigated by the DCI Nairobi and the applicant arrest was executed by the police in Nairobi county who are also responsible for his arraignment. There is no evidence that the case was brought before the wrong court or that arraigning the applicant was prejudicial to him or an abuse of power.



11. There is no legal relation or territorial connection between the jurisdiction he seeks to have the matter transferred. Further the employer / principal is the complainant and not the contracted company with an office in Mombasa. Contrary to the applicant's claim, there is inconvenience in allowing the application.
12. Lastly, the fact that the applicant is not comfortable with his current surety or that he is unable to get a surety within Nairobi cannot affect the trial. The applicant is still benefiting from bond terms and has been able to attend court. The applicant may make an application to avail a different and more suitable surety.

The trial court has power to give convenient dates and also fastrack the trial to deal with the alleged financial challenges faced by the applicant.
13. The upshot of the above is that the application lacks merit, accordingly, it is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 25TH DAY OF APRIL, 2024.

**L. N. MUTENDE
JUDGE**

