



Republic v Okeyo; Joy Millers Limited (Interested Party) (Criminal Revision E193 of 2023) [2024] KEHC 6039 (KLR) (28 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL REVISION E193 OF 2023
RM MWONGO, J
MAY 28, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

WALTER OKEYO RESPONDENT

AND

JOY MILLERS LIMITED INTERESTED PARTY

(In the matter of Revision of the Order made on 27th December, 2023 by Hon. L.W. Kabaria in Gichugu PM's Court in Criminal Case No. E859 of 2023)

RULING

1. The application herein by the state seeks that this court do order the trial court at Gichugu to proceed with PM Criminal Case No. E859, and not to transfer to Kisumu as ordered by that court on 27.12.2023. The said order was made because the charge indicates that the offence was committed in Nyamasira in Kisumu County.
2. The application thus seeks revision by the High Court of the trial courts orders under Section 362 -364 of the CPC and Article 165 (3) of the Constitution.
3. The Respondent is the accused who was chares with the offence of obtaining goods by false pretenses. It is alleged that the Respondent with intent to defraud, obtained goods from Joy Millers Ltd valued at Kshs.659,050/=, and issued a bad cheque.
4. The applicant submits that the report of the offence as made at Kutus Police Station; that the goods were picked or collected from the complainant factory at Kutus; that the accused was arrested and held at Kutus Police Station; that bogus cheques were deposited at the complainants account with Equity Bank at Kutus town; that all the witnesses to the case reside within the jurisdiction of



Gichugu Principal Magistrate's Court; and the directors of the complainant company are within Kutus township.

5. The Respondent/Accused is the one who applied the trial court for the file to be transferred, and got the orders sought. He submits that he was arrested on 2.12.2023 at Nyamasira Area in Kisumu County. He was told he was being taken to the nearest police station, Kagaram Police Station near Nyamasira. However, he was driven to Nairobi and later to Kirinyaga County where he was detained at Kutus.
6. The Respondent opposes the application on the grounds that the charge sheet indicates that the Accused/Respondent was charged with obtaining at Nyamasaria town, Kisumu County.
7. The Respondent urges that Section 71 CPC requires that every offence shall be tried ordinarily by a court within the local limits of the court in whose jurisdiction it was committed, or within the local limits whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence or has appeared in answer to a summons.
8. Further the Respondent submits that under Section 67 CPC if the accused has escaped or (was) removed from the district within which the offence was committed one is found in another district, the court in whose jurisdiction he was found shall cause him to be brought before it and, unless authorized to proceed with the case, shall send him to custody to the court within whose jurisdiction the offence is alleged to have been committed.
9. The Interested Party, Joy Millers Ltd, are the complainant.
10. The support the application seeks that the transfer of the file to Kisumu be revoked. They urge that the trial court has no jurisdiction to transfer cases to courts that are outside its local limits.
11. I have perused the lower court file carefully. The charge clearly states that on 9th day of September, 2003, "in Nyamasira town in Kisumu County" with intent to defraud the accused obtained from Joy millers Ltd goods valued at Kshs, 659,050/= by falsely pretending he had money in his account to pay for these said goods.
12. Counts 2, 3 and 4 in the Charge Sheet do not indicate where the offences were committed.
13. The trial court in its ruling stated:

“...the charge sheet indicates that the offence took place in Nyamasaria town Kisumu County. Clearly that is where the charge ought to have been preferred.”
14. Section 72 CPC which was quoted to the court by the Defence/Respondent was therefore applied and the order issued. Section 72 CPC provides:

“When a person is accused of the commission of an offence by reason of anything which has been done or of any consequence which has ensued, the offence may be tried by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.”
15. The court's role in revision is under section 362 CPC, merely to:

“satisfy itself as to the correctness, or propriety legality of any sentence or order recorded or passed and as to the regularity of any proceedings of any subordinate court.”

This court's role is therefore not to sit on appeal at the time of revision.



16. Section 72 CPC provides as follows:

“When a person is accused of the commission of an offence by reason of anything which has been done or of any consequence which has ensued, this offence may be tried by a court with the local limits of whose jurisdiction the thing has been done or the consequence has ensued.”

17. Section 72 is clearly double pronged. The trial court before whom the charge is presented is entitled to look at two things:

- a) the commission of the offence by reason of anything which has been done; or
- b) by reason of any consequence which has ensued.

18. In either case the offence may be tried in the court within the local limits of whose jurisdiction the thing has been done; or alternatively in relation to where the consequence of the offence has ensued. The side note to Section 72 clearly highlights this distinction.

19. In the charge, the offence is stated to have been committed in Nyamasaria. However, the consequence which has ensued is the obtaining from Joy Millers Ltd. Nothing in the charge indicated the venue or place where the consequence of the act ensued.

20. Accordingly, the trial court was left with a consideration of only the place where the offence was done. To this end, there is nothing incorrect, illegal or lacking propriety in the decision or proceeding of the court in respect of the place where the offence was done.

21. As to whether the trial court had power to transfer the file, Section 78 (1) and (2) of the CPC provides as follows:

“(1) If upon the hearing of a complaint it appears that the cause of complaint arose outside the limits of the jurisdiction of the court before which the complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.”

“(2) If the accused person is in custody and the court directing the transfer thinks it expedient that custody should be continued, or, if he is not in custody, that he should be placed in custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for that purpose to the officer, and shall deliver to him the complaint and recognizances, if any, taken by the court, to be delivered to the court before whom the accused person is to be taken; and the complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by the last-mentioned court.”

22. My view herein is buttressed by the provision of Section 76 (1) which provides that where the trial court is in doubt as to where the offence should be tried, it is to report the circumstances to the High Court, and the High Court is to decide where the offence shall be tried. The High Court’s decision under this section is conclusive on the court.



Disposition

- 23. Ultimately, I am not persuaded that there is a basis for this court to interfere by way of revision with the trial court’s decision.
- 24. The application therefore fails and is hereby dismissed.
- 25. The trial court file shall be returned to the trial court for implementation of its orders.
- 26. The revision file is closed.
- 27. Orders accordingly.

DATED AT KERUGOYA THIS 28TH DAY OF MAY 2024

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R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Maari for the Applicant/State
- 2. Ochieng for the Respondent Walter Okeyo
- 3. Hamba for Interested Party
- 4. Mr. Murage, Court Assistant

