



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Iddi (Criminal Revision E200 of 2022)  
[2023] KEHC 3611 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3611 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E200 OF 2022  
SM GITHINJI, J  
APRIL 26, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAID JUMA IDDI ..... RESPONDENT**

*(From Original Conviction and Sentence in Criminal  
Case No. 286 of 2018 of the Magistrate's Court at Kilifi)*

**RULING**

1. This matter was referred to this court by Hon J.M Kituku, SPM Kilifi Magistrate's Court. The said magistrate had heard the matter up to the point of closure of the prosecution's case. On October 27, 2021 parties were directed to file submissions and a mention date given of November 29, 2021.
2. On November 29, 2021 it is not clear why the file was not placed before the trial magistrate as it was dealt with by Hon G.O Kimanga – SRM. Though the said subsequent magistrate was not in conduct of the matter, he simply went ahead and found that the accused person had a case to answer and accordingly placed him on his defence. Defence hearing was done on February 28, 2022 and a judgement date was given of March 21, 2022. The matter is therefore pending judgement.
3. Hon J.M Kituku – SPM who had the previous conduct of the matter is still in Kilifi Senior Principal Magistrate's Court. Transfer of cases from one judicial officer to another is done procedurally under the law and for given reasons. It does not change hands or picked by judicial officers as they may desire. When properly done, for partly heard matters, section 200 (3) of the *Criminal Procedure Code* should be strictly complied with. What happened in this case is a big surprise, unwarranted and totally against the law. As such, for purposes of compliance with the law, the option left is to expunge the unprocedural hearing from the date of November 29, 2021, recorded by Hon G.O Kimanga – SRM,



and have the file placed before Hon J.M Kituku – SPM, to continue regularly with the hearing from the point reached on October 27, 2021.

This court's so directs on review.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF APRIL, 2023**

.....  
**S.M. GITHINJI**

**JUDGE**

