



**Republic v Kimathi & 2 others (Criminal Case 34 of 2017)
[2023] KEHC 18349 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 34 OF 2017
EM MURIITHI, J
MAY 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH KIMATHI 1ST ACCUSED

LAWRENCE MASON 2ND ACCUSED

DON MUGAMBI KIMATHI 3RD ACCUSED

RULING

1. Section 201 (2) of the [Criminal Procedure Code](#) applies the provisions of section 200 [Criminal Procedure Code](#) Mutatis Mutandi in the High Court trial.
2. By section 200 (3) an accused ‘may demand that any witnesses be resummoned and reheard.’ In exercise to discretion to allow recall of witnesses, the court must act judicially and the accused must show sufficient cause consistently with right to fair trial and trial within a reasonable time.
3. In this application, the accused’s counsel only justified the recall with regard to the minor (PW1) who it was urged “the court should take the voire dire examination and demeanor can only be noted by the present court” which finally tries the matter.
4. The court considers that there is a reasonable request for the recall of the minor witness PW1, and therefore directs that the trial shall proceed from the position that the matter had reached with the previous court, subject only to the recall of PW1 the minor witness for voire dire examination and subsequent examination and cross – examination, as necessary.
5. Directions as to further hearing shall be taken in consultation with counsel for the prosecution and the reference.



6. Mention on June 14, 2023 for directions as to hearing date.

DATED AND DELIVERED THIS 31ST DAY OF MAY, 2023

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila for DPP

Mr. Mutuma Joel for Accused.

