



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISC CRIMINAL APPLICATION NO 52 OF 2019

PETER GAKANGA NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant herein, **PETER GAKANGA NJOROGE**, is the 1st accused before the trial court in *Nanyuki CM Criminal Case No132 of 2017* where he and his co-accused are facing the main charge of robbery with violence contrary to section 296(2) of the Penal Code. The prosecution there called all its witnesses and closed its case. The Applicant and his co-accused were found to have a case to answer and were put to their defence.

2. Before they could present their defences however, the trial magistrate, **Hon JW Gichimu**, was transferred to another station. In June 2019 he came back to Nanyuki on two occasions to try and finish his part-heard cases (including the Applicant's case). However, the Applicant and his co-accused could not present their defences on those two occasions for various reasons recorded in the trial court record. Thereafter **Hon Gichimu** appears to have indicated that he would not be able to come back to *Nanyuki Law Courts* again to finish his part-heard cases. The mater was then placed before the Chief Magistrate, **Hon LK Mutai**, who duly complied with **section 200** of the *Criminal Procedure Code*. The Applicant's co-accused informed the court that he would be happy to have the case proceed before the Chief Magistrate from where it had reached. The Applicant however, indicated that he wanted **Hon Gichimu** summoned to come back to Nanyuki to finish his case; and he has so applied before this court in the present application. The application is opposed by the Republic.

3. I have considered the Applicant's submissions, both written and oral, as well as those of the learned prosecution counsel for the Respondent. Judicial officers (Judges and Magistrates) get transferred to new stations all the time. This is normal as it cannot be expected that a judicial officer will work at one station all his/her working life.

4. When judicial officers get transferred to new stations they will invariably have matters that are part-heard before them; the notice of transfer is never sufficient to enable judicial officers to finish all their part-heard matters before they proceed to their new stations.

5. In such event, a judicial officer might have one or two chances to come back to his old work station to try and finish his or her part-heard cases. But as it happens, it is very rare indeed for judicial officers to finish all their part-heard cases on one or two visits. Further, with the work-load at the new station, it may not be possible for a judicial officer to make a third visit to his or her old station to deal with the part-heard matters. That appears to be what has happened in the Applicant's case.

6. And that is why too, **section 200** of the *Criminal Procedure Code* was enacted. That section states –

“200. (1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may –

a) deliver a judgment that has been written and signed but not delivered by his predecessor; or

b) where judgment has not been written and signed by his predecessor, act on the evidence recorded by that predecessor, or resubmit the witnesses and recommence the trial.

(2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceased to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, that succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.

(3) Where a succeeding magistrate commences the hearing or proceedings and part of the evidence has been recorded by his

predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.”

7. The law thus recognizes that it may not be possible for judicial officers to complete all their on-going cases. Death, transfer or other attrition may intervene.

8. There is absolutely nothing unlawful or unconstitutional in a new trial magistrate taking over the hearing of a part-heard criminal case from a fellow magistrate who has died, retired, or been dismissed or transferred to another station. I find absolutely no merit in the present application. It is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JANUARY 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 30TH DAY OF JANUARY 2020