



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**CRIMINAL REVISION CASE NO. 20 OF 2019**

**JAMES NGUI NGONGA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. By a letter dated the 12<sup>th</sup> day of **March, 2019**, **Hon. Kibet Sambu**, Senior Principal Magistrate and Head of Station, **Mwingi Law Courts** has reported to this Court that, **James Ngui Ngonga**, an Accused in **Criminal Case No. 504 of 2018**, is facing a myriad of cases including **Criminal Case No. 192, 319, 58 and 109 of 2018**. The stated cases have been allocated to the two (2) Magistrates at the station and are pending hearing and determination. It is for that reason that he seeks my intervention pursuant to **Article 165(6) and (7) of the Constitution**.

2. **Section 81(1) and (2) of the Criminal Procedure Code** provides thus:

***“(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 a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;***

***(iii) that an accused person be committed for trial to itself.***

***(2) The High Court may act on the report of the lower court, or on the application of a party interested, or on its own initiative.”***

3. The report of the learned Magistrate presiding over the Lower Court indicate that both the Defence Counsel and Counsel holding watching brief for the Complainant appreciated the multiplicity of cases which called into question the issue of fair administration.

4. From the foregoing it is apparent that fair and impartial trial will be called into question which impacts on the question of ends of justice being met or not.

5. In the premises it will be necessary for the instant case (**Mwingi Criminal Case No. 504 of 2018**) to be tried by another Court of

competent jurisdiction.

6. Therefore, I direct that the case herein shall be transferred to **Kitui Chief Magistrate's Court** for hearing and determination.

7. Mention on **10<sup>th</sup> July, 2019**.

8. It is so ordered.

**Dated, Signed and Delivered at Kitui this 27<sup>th</sup> day of June, 2019.**

**L. N. MUTENDE**

**JUDGE**