



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**CRIMINAL REVISION 333 OF 2018**

*(Being a revision in respect of orders by Murigi, Chief Magistrate in Thika Criminal Case No. 6625 of 2015)*

**PAUL KINUTHIA.....1<sup>ST</sup> APPLICANT**

**JAMES KARARU KINGORI.....2<sup>ND</sup> APPLICANT**

**SIMON ADULAN MAKATO.....3<sup>RD</sup> APPLICANT**

**VS.**

**ODPP..... RESPONDENT**

**DIRECTIONS ON REVISION**

1. On 10<sup>th</sup> May 2018, the Chief Magistrate sitting at Thika referred Thika Criminal case No. 6625/15 to this court for directions. The order was precipitated by a successful request by the court prosecutor to recuse himself from conducting the prosecution. The request was based on undisclosed "personal reasons".
2. The record shows that the accused persons were arraigned in court on 22/12/15, charged with the offence of Robbery with violence contrary to section 296(2) of the Penal Code. Since then, several hearing dates have come and gone; the hearing has not started. Meanwhile the accused have remained in custody.
3. Hon. Omodho Senior Resident Magistrate who was seized of the matter on the last hearing date, the 15<sup>th</sup> March, 2018, recused himself on that date, citing "serious threats" to his security and the accused's conduct in court. On the same date, the matter was placed before Hon. Murigi Chief Magistrate who made the order to refer the case to this court for directions.
4. I have perused the record of the lower court file and in particular the proceedings of the 15<sup>th</sup> March, 2018. On the face of it, only one magistrate and prosecutor have recused themselves from handling the subject matter. The accused persons objected to the referral of the case to this court, stating that the complainant hails from Kiambu. It would seem that the Accused understood the referral this to mean a transfer, and were apprehensive about their case proceeding in Kiambu.
5. In my view, the recusal of the prosecutor without any good grounds being stated is not enough reason for the transfer of the case to another court, as I presume to be the implied request by Hon. Chief Magistrate. Ditto for the recusal of one trial magistrate. There are several courts at Thika Law Courts including the Chief Magistrate's which are competent to handle the case herein, and should. This matter has pended for two years. The accused persons are in custody. I see no reason why a different prosecutor and court at Thika Law Courts other than the ones who have recused themselves cannot proceed to hear the matter to conclusion.
6. I therefore direct that the subject file be returned to the Chief Magistrate's court Thika, and placed before the Chief Magistrate on 30<sup>th</sup> May, 2018 for fixing of early hearing dates. The matter is to be expedited in light of previous delay. For this purpose, a production order is issued for the production of the three accused persons currently held at the G.K Prison Nyeri.

**Delivered and signed at Kiambu this 22<sup>nd</sup> Day of May, 2018.**

.....

**C. Meoli**

**JUDGE**