

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.139 OF 2016

(An Application for Revision arising out of a Ruling by Hon. B. Ochoi –PM delivered on 1st March 2016 in Kibera CM. CR. Case No.2048 of 2016

THE CHIEF MAGISTRATE,

KIBERA LAW COURTS.....APPLICANT

VERSUS

JOSEPHINE MUTHONI MWAURA.....RESPONDENT

RULING

The Jurisdiction of the court under **Section 362 and 364** of the **Criminal Procedure Code** has been invoked by the trial magistrate seeking clarification in respect to whether the court can proceed with the trial in circumstances in which a magistrate, who was previously seized with jurisdiction in the case, had made an order that the case starts *de novo* under **Section 200** of the **Criminal Procedure Code**. The trial magistrate was put in this dilemma by the accused who now informs the same court that she wishes to have the case proceed from where the previous proceedings had reached.

Section 200(3) of the **Criminal Procedure Code** vests the right to an accused person to decide whether or not she wishes to have the trial continue in circumstances where another magistrate is taking over proceedings from the magistrate who previously handled the case. This right can only be exercised by the accused but subject to any observation that the prosecution will make in the matter.

In the present case, it is evident that the accused has since changed her mind in regard to how she wishes the trial to proceed. She wishes to have the trial proceed from where the proceedings had reached and not the earlier position that she had taken that the case starts *de novo*. That is her prerogative. Now that she has no objection to the case proceeding in the manner that she has proposed, this court, in exercise of its jurisdiction under **Section 362 and 364** of the **Criminal Procedure Code**, sets aside the order earlier issued by Hon. Brian Khaemba on 20th February 2014 directing that the case begins *de novo*. The trial magistrate shall be at liberty to proceed with the case from where the previous magistrate ceased to exercise jurisdiction. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF AUGUST 2016

L. KIMARU

JUDGE