



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 13 OF 2016**

**MUSYOKA MWANZI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**ORDER ON REVISION**

1. This file has been placed before me pursuant to the provisions of **Section 362** of the **Criminal Procedure Code**. I am obligated to examine the record of proceedings before the subordinate court to satisfy myself of the correctness, legality or propriety and regularity of the proceedings of the court.

2. The circumstances of this case are that the matter was initially heard by **Hon. Kibiru, Ag. Chief Magistrate**. Prior to being transferred he had directed that the Complainant in the matter who had not been declared a vulnerable witness be availed in court for purposes of testifying. When the matter went before **Hon. Rose Ombata, Resident Magistrate** she complied with **Section 211** of the **Criminal Procedure Code** whereafter the Accused indicated that he wished the matter to proceed from where it had reached.

3. On the **20<sup>th</sup> May, 2015** the matter was placed before **Hon. Lesootia, Senior Resident Magistrate** who complied with **Section 211** of the **Criminal Procedure Code** and put the Accused on his defence. Thereafter the Accused absconded. **Hon. Lesootia, Senior Resident Magistrate** was subsequently transferred and **Hon. R. Ombata, Resident Magistrate** took over the matter whereafter she noted the anomaly.

4. **Section 200(3)** of the **Criminal Procedure Code** provides thus:

*“(3) Where a succeeding magistrate commences the hearing of 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.”*

5. Following the transfer of **Hon. Kibiru, Ag. Chief Magistrate** Judicial Officers who took over the matter from him ought to have complied with **Section 200(3)** of the **Criminal Procedure Code**. This was not done.

6. It is important to note that **Hon. Lesootia, Senior Resident Magistrate** purported to comply with **Section 211** of the **Criminal Procedure Code** prior to the Prosecution closing its case as required by the law.

7. The trial was vitiated by the error made by the learned Magistrates. In the premises I set aside proceedings that were not proper in the circumstances and order the matter to be heard denovo before **Hon. R. Ombata, Resident Magistrate**.

8. It is so ordered.

**Dated, Signed and Delivered at Kitui this 12<sup>th</sup> day of October, 2016.**

**L. N. MUTENDE**

**JUDGE**