

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL REVISION NO 21 OF 2014

(From an order in Kigumo SPM Criminal Case No 131 of 2013 by which the Applicant was placed on his defence in his criminal trial)

JORAM KIARIE NJUGUNA.....APPLICANT

VERSUS

REPUBLIC.....REPOENDENT

R U L I N G

1. The Applicant is an accused in the lower court where he is being tried for an offence he has not specified. Apparently at some point during his trial the trial magistrate was transferred to another station and another one took over the trial under **section 200** of the **Criminal Procedure Code, Cap 75**. It would appear further that the Applicant demanded, as he was entitled to do, for recall of the witnesses who had already testified before the outgoing trial magistrate, and the necessary order for recall of those witnesses was made by the new trial magistrate. As it happened, and for reasons as yet unknown to this court, those witnesses never appeared before the trial court as ordered. Eventually the prosecution closed its case and the Applicant was placed on his defence upon the trial court finding that he had a case to answer.

2. The Applicant was aggrieved by the said order that placed him on his defence, and he applied to this court by notice of motion dated 01/07/2014 for an order of revision in respect thereof under **section 364** of the Criminal Procedure Code. He wants the order placing him to his defence quashed so that he can be acquitted without being placed on his defence. The Republic opposes that application.

3. I find no good or just reason to interfere with the Accused's trial in the lower court. This court can gauge whether there was a *prima facie* case established by the prosecution in his trial to require him to be placed on his defence only in a proper appeal against his conviction, should there be one. The Applicant should wait until his trial is completed, and in the event that he is convicted, he will have the liberty to appeal against the conviction. In that event one of his strong grounds of appeal will be that prosecution witnesses were not recalled as he had demanded under section 200 of the Criminal Procedure Code. Let us cross that bridge when we get there. For all we know he might be acquitted, and then he will have no cause to complain against the order placing him on his defence.

4. In the circumstances, I decline the order of revision sought. The application is dismissed. I direct that the Applicant's trial in the lower court do proceed to its logical conclusion. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 23RD DAY OF JUNE 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 26TH DAY OF JUNE 2015