



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO. 25 OF 2009**

**REPUBLIC**

**VERSUS**

**NICHOLAS WANJOHI GAKUYA.....ACCUSED**

**RULING**

The accused person was charged with murder contrary to section 203 as read with section 204 of the Penal Code. He was alleged to have murdered one Nicholas Mwangi Karuri on 5<sup>th</sup> April, 2009. The offence was committed at Edana Trading centre of the then Laikipia District.

The record shows that the trial commenced before Makhandia J (as he then was) on 16<sup>th</sup> July, 2009 and evidence of the first two prosecution witnesses were taken before the learned judge.

Thereafter and more particularly from the 9<sup>th</sup> September, 2010 the trial proceeded before Sergon, J who took the evidence of at least five other prosecution witnesses. The record shows that the judge last handled this case on 12<sup>th</sup> October, 2012 and from then on Wakiaga J took over the matter; however, as at 25<sup>th</sup> November, 2014 when the case was first mentioned before me no evidence had been taken before Wakiaga J.

On 8<sup>th</sup> May, 2015 the accused person was invited to exercise his right under **section 200(3)** of the Criminal Procedure Code and inform the court whether he would want the trial to begin *de novo* considering that the two judges who had partly presided over his case were no longer at the station. His counsel insisted that the case starts *de novo*. Counsel for the state, on the other hand, opposed that bid and gave his reasons for doing so.

I reserved the matter for ruling but while it was pending for delivery, Nanyuki law courts' station was gazetted as a High Court station in whose jurisdiction this case now falls.

Since this case will now be heard by the Resident Judge at the High Court in Nanyuki, it would be illogical for me to purport to give directions on whether or not it should proceed *de novo* yet I will not hear it. It will be prudent for this decision to be taken before the Resident Judge at Nanyuki who is now seized of the matter

I am therefore directing the Deputy Registrar to have this file transferred to the High Court at Nanyuki before which directions under **section 200** of the **Criminal Procedure Code** will be taken on how this matter shall proceed forthwith. Parties will be at liberty to make their submissions on this issue afresh before the Resident Judge, High Court Nanyuki. It is so ordered.

**Signed, dated and delivered in open court this 14<sup>th</sup> day of December, 2015**

Ngaah Jairus

**JUDGE**