

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 9 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

MOSES WANJALA NGAIRA.....ACCUSED

RULING

1. This trial opened before Mshila J. on 18th January 2012. A total of eight witnesses testified for the prosecution. On 17th December 2012, the Court found that the accused had a *case to answer* and placed him on his defence. The learned Judge was subsequently transferred to another station.
2. On 19th March 2013, the succeeding judge explained to the accused his rights under section 200 of the Criminal Procedure Code. The accused elected to proceed from where the case had reached. On 26th May 2014, the matter was listed before another judge. The rights under section 200 of the Code were explained afresh to the accused. During the latter session, the accused elected to proceed from where the case had reached *but* opted to recall prosecution's witness number one. The witness was recalled and testified before me on 7th July 2014. The witness was examined briefly by the State and cross-examined by learned defence counsel.
3. The effect of the recall was to *re-open* the prosecution's case notwithstanding the earlier order of 17th December 2012. I have now reconsidered and re-evaluated the testimony of the original eight witnesses and the evidence of PW1 upon being recalled to the stand.
4. On the totality of that evidence, I am persuaded that the State has established a *prima facie* case against the accused. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I now place the accused on his defence.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 4th day of August 2014.

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Mr. Kemboi, Court Clerk.