



REPUBLIC OF KENYA

High Court at Nakuru

Revision Case 5 of 2013

DANIEL MUCHIRI NGIGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

ORDER ON REVISION

Revision under **Section 362** and **364** of the **Criminal Procedure Code**. This file **Criminal Case 2131/12, Rep. v Daniel Muchiri Ngige**, has been placed before me by the trial magistrate who states that she erred by discharging the accused under **Section 202** of the **Criminal Procedure Code** for non attendance by one PC Hassan who is the Investigation Officer in the matter.

When the trial magistrate made the order, four witnesses had already testified and the prosecutor was in court and it was therefore an error for the court to discharge the accused under **Section 202** of the **Criminal Procedure Code** for non attendance by PC Hassan. **Section 202** of the **Criminal Procedure Code** allows the court to acquit an accused person for non attendance by the complainant. In this case, the complainant had testified and the prosecutor was in court on behalf of the State. If the prosecution was not able to call any other witness, the court should have asked the prosecutor to close his case and the court would then have ruled on whether or not the accused had a case to answer based on the evidence already on record.

It is confirmed that no warrant has been issued and the accused is still held in remand. In exercise of my revisionary powers under **Section 364** of the **Criminal Procedure Code**, I hereby set aside the magistrate's order discharging the accused pursuant to **Section 202** of the **Criminal Procedure Code**. I direct that the trial do proceed, as the trial court will direct. It is so ordered.

**DATED this 25<sup>th</sup> day of April, 2013.**

**R.P.V. WENDOH**  
**JUDGE**