

REPUBLIC OF KENYA

High Court at Machakos

Revision Case 578 of 2012

NDAVI KYENZE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

ORDER ON REVISION

Apparently this case was heard by **Hon. Simiyu, RM** until the close of prosecution case. The hearing of the defence then was scheduled for 13th August, 2012. All this time the accused was in custody. On the 13th August, 2012, it transpired that **Hon. Simiyu** had proceeded on maternity leave and was due to resume duties in late November, 2012. As the accused felt that the case will take too long to conclude it was to wait the resumption of duty by **Hon. Simiyu**, he caused the case to be placed for mention before Court 1 on 27th August, 2012. The accused elected to have the case proceed before another court. Thereafter, the case was allocated to Court 7 for further hearing. However, this was not to be as the proceedings could not easily be typed. In the meantime, the accused attended the court 5 times pending the typing of the proceedings. On 26th October, 2012 the accused requested the court to start the case *de novo* which the learned magistrate conceded to. However, on 8th November, 2012 the magistrate transferred the case to Mavoko Law Courts for hearing. After going through the file, the court at Mavoko sent it back and requested that in the interest of justice, the initial trial magistrate should conclude the case.

Due to the above circumstances, the file was placed before me for an order or revision. The reason the case was in the first place re-allocated to another court was because the trial magistrate had gone on a long maternity leave. She has since resumed duty. The complainant is a minor. Since **Hon. Simiyu** is now in turn no prejudice will be occasioned to the accused if she was to proceed and hear the case to its conclusion. I would therefore vacate the order directing that the case be heard by court 7 and the order transferring the case to Mavoko Law Courts which in my view was made without jurisdiction. Instead I direct that the **Hon Simiyu** resumes to the hearing o the case to finality.

DATED at MACHAKOS this 30TH day of NOVEMBER, 2012.

**ASIKE-MAKHANDIA
JUDGE**

DATED, SIGNED and DELIVERED at MACHAKOS this 30TH day of NOVEMBER, 2012.

**GEORGE DULU
JUDGE**