

heard the defence case and finally disposed of the case. On 16/08/2007 when Mr. Sogomo took over the case, he did not apply the provisions of section 200 of the Criminal Procedure Code (C.P.C) at that stage of the trial. Section 200 (3) requires that the succeeding magistrate informs the accused of his right to recall all the witnesses who have testified. The response of the accused must be recorded. In the proceedings of the material day, there was no mention of section 200 of the C.P.C or even its provisions. This was a violation of the rights of the accused under the section. Non-compliance with those provisions renders the whole proceedings null and void. I find that the rights of the accused person were violated and I declare the proceedings of the trial court null and void.

The convictions and sentences imposed are hereby set aside. The Appellant did not pursue the issue of violation of his rights under section 72 (3) of the Constitution during the hearing of the appeal. I note that the issue was not raised during the trial and therefore deprives the state of the opportunity to explain the delay. For that reason, I am not convinced that there is a good ground for making a declaration of such violation. If I am proved wrong, the provisions of the remedy under section 72 (6) of the Constitution may be utilized.

The Appellant is hereby set at liberty unless otherwise lawfully held.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Bungoma this 19th day of October, 2010. In the presence of the Appellant and the State Counsel Mrs. Leting.

F. N. MUCHEMI

JUDGE