



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Criminal Case 5 of 2007**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**PAULINE KARAMBU ..... ACCUSED**

**RULING**

The accused in this matter was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The prosecution's case was conducted before Justice Ouko. At the end of the prosecution's case, the judge ruled that the accused had a case to answer. She was therefore put to her defence. That ruling was read by me because Judge Ouko had by October 2009 been transferred to Nakuru High Court. On putting the accused to her defence the accused elected to give a sworn testimony without calling any witnesses. She indeed proceeded to defend herself. Judgment was reserved for today. However, in going through the proceedings, I realized that I failed to comply with Section 201 (2) of the Criminal Procedure Code. That being the case, I have chosen not to do the judgment but rather to set aside the proceedings relating to the defence hearing for the same to be re-heard after directions having given as per section 201 (2). The Court of Appeal in the case **Bob Ayub alias Edward Gabriel Mbwana alias Robert Mandiga vs. Republic** Criminal Appeal No. 106 of 2009 dealt with an appeal where a High Court Judge had taken over a criminal trial partly heard before another judge without complying with section 201 (2). This is what the Court of Appeal stated in that case:-

*“Section 201 (2) enjoins the trial judge taking over a partly heard criminal trial to comply with the provisions of section 200 of the Criminal Procedure Code. It says:-*

***The provisions of section 200 of this Act shall apply mutatis mutandis to trials in the High Court.***

*Section 200 (3) states:-*

***Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused that right..... Our short answer to that is that it was the appellant who was on trial and the duty of the court was to the appellant and not to his advocate. The written law makes that duty mandatory. The mere mention in the judgment that section 200 was complied with is hollow without any evidence from the record.”***

I therefore hereby set aside the proceedings relating to the defence hearing of 16<sup>th</sup> June 2010 and also set aside the accused counsel's submissions made on 22<sup>nd</sup> July 2010. At the reading of this ruling, a date will be given for further hearing of this case.

Dated and delivered at Meru this 8<sup>th</sup> day of October 2010.

**MARY KASANGO**  
**JUDGE**