



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Criminal Revision 134 of 2009

**JAMES GESO KIMARI ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**REVISION**

Under the First Schedule to the **Criminal Procedure Code** the offence of manslaughter contrary to section 202 and 205 of the Penal Code can only be heard by a subordinate court of the first class presided over by a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate or Senior Resident Magistrate. Following the transfer of the Ag. Senior Resident Magistrate who was seized of this case, the learned Chief Magistrate directed Court No.5 presided over by a Resident Magistrate to take over the conduct of the case. The matter had been heard partly as four prosecution witnesses had testified. The case came up severally before the learned Resident Magistrate. The prosecution were unable to avail the rest of their witnesses and were ordered to close their case, whereupon the magistrate made a determination that the accused had a case to answer.

The learned Chief Magistrate had no jurisdiction to ask the learned Resident Magistrate to take over the case as the latter could try a manslaughter case. Under **sections 362 and 364 (1) (b)** of the **Criminal Procedure Code**, the order by the Chief Magistrate directing the Resident Magistrate to take over the case is set aside. All subsequent proceedings before the Resident Magistrate are, for want of jurisdiction, also set aside. It is hereby directed that the Chief Magistrate allocates the file to a competent court under him to urgently try and finalise the matter.

**A. O. MUCHELULE**

**JUDGE**

**20/8/2009**