

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.227 OF 2003

(From original conviction and sentence of the RM's court at Keroka in criminal case
No.117 of 2002)

ELIJAH GEKONGE NYANGAU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

The appellant was convicted for the offence of making false document. The case was heard by Mr. Okile an R.M. who left the service after the close of prosecution case.

Hearing was taken over by Mr. Ombito R.M. who had the defence case, wrote the judgment, convicted the accused and jailed for 5 years. When taking over the case the magistrate recorded "Court: Case to proceed under s.200 from the last hearing."

This, as admitted by the State was not in compliance with s.200 CPC. Accused should have been explained his right and left to chose for the case to proceed from where it had reached or to start afresh. The new magistrate cannot on his own decide to proceed from where the case had reached.

For that reason the appeal succeeds. The conviction is quashed and sentence set aside.

The state prayed for a retrial. I note the accused have already served over 8 months. I think that is enough punishment and I decline to order a retrial. Accused should be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

Dated and delivered on 18/3/04.

KABURU BAUNI
JUDGE
18/3/04

Mr. Mokuu for appellant.