



**Republic v Chebi (Criminal Case E116 of 2021)
[2023] KEHC 18141 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E116 OF 2021
SC CHIRCHIR, J
MAY 22, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FRED SIPOLIKA CHEBI ACCUSED

RULING

1. This hearing of this case proceeded before my brother Justice Musyoka until January 18, 2023. By the time the matter came up for further hearing on May 18, 2023, the Judge had gone on transfer and it fell on me to handle the hearing.
2. Directions were taken pursuant to the provisions of section 200 (3) of the Criminal Procedure Code (CPC), and accused informed the court that he would want the hearing to start afresh.
3. The prosecution objected. It is the prosecution submission that the right under section 200(3) of CPC is not absolute but is subject to various considerations such as the availability of witnesses and whether the witnesses can easily be recalled to appear, without causing undue undue delay. The prosecution was concerned that she may not be able to trace the witnesses. She further submitted that the accused has not given reasons as to why he needs the hearing to start afresh.
4. She contends that the application is meant to defeat the cause of justice

Determination

5. Section 200 of CPC gives directions on what happens where the proceedings have been recorded by different magistrates in the course of hearing. In particular Section 200(3) provides as follows; -

“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 summoned and reheard and the succeeding magistrate shall inform the accused person of that right. (Emphasis added)

And

Section 201(2) provides that “the provisions of section 200 of this Act shall apply mutatis mutandis to trials held in the High Court.”

6. Some of the considerations to be borne in mind before invoking section 200 includes whether it is convenient to commence the trial denovo, how far has the trial reached, availability of witnesses who had already testified, possible loss of memory of the witnesses, the time that had lapsed since the commencement of trial and the prejudice likely to be suffered by either the prosecution or the accused. (see *Joseph Kamau Michuki vs Republic* (2013)eKLR.
7. The prosecution in this case has argued that they cannot guarantee the availability of witnesses. This is not the same as saying the witnessed will not be available ,as for instance , in cases where witnesses are said to have since died.
8. The accused was charged in April, 2021. That was just 2 years ago. It cannot be said that witnesses’ memories have faded.
9. The matter has not also been in court for long, so it cannot be said that the hearing of the case denovo negates the constitutional principle and public policy requirement of disposing cases expeditiously. The record shows that 4 out of the 10 possible prosecution witnesses have testified and hence there are more witnesses that are yet to take the stand.
10. In the circumstances, I find that no prejudice will be suffered by the prosecution. I am not persuaded by the prosecution’s allegation that the accused is out to delay the cause of justice.
11. Finally, in allowing the accused’s prayer, I have considered the finding in the Court’s finding in the case of *Catherine Mueni Makau vs Republic* (2012) eKLR where the court, in reference to section 200(3) held as follows: “this provision has been given a liberal interpretation to mean that it is entirely up to the accused to chart the way forward of his case where it is taken over by another magistrate. He may elect to have the case commence devono or proceed from where the previous magistrate left. Therefore, the decision whether to proceed from where the previous magistrate left does not lie with the magistrate. It is with the accused. The incoming magistrate has no discretion or choice in the matter. The provisions are couched in mandatory terms. These are some of the so-called fair trials precious of the law. They cannot be sacrificed at the altar of the complainant’s convenience”
12. In conclusion, the Accused’s prayer is hereby allowed. The hearing in this case will start afresh.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 22ND DAY OF MAY 2023

S CHIRCHIR.

JUDGE

In the presence of;-

Erick- Court Assistant.

Accused- present

Ms Odumba for the State

