



1. Criminal Practice and Procedure
2. **Subject of main case murder**
 - a) Hearing began 6th June, 2006 Kimaru Judge with assessors
 - b) Proceeded with Mugo J 19th May, 2008 for hearing
 - c) Order to being De novo by Mugo J mistrial.
 - d) Day called out for hearing witnesses absent.
3. Application to dismiss case against accused as witnesses not present. State opposes application.
4. **Held**
 - a. The circumstances of case show witness were available on 6th June, 2006.
 - b. Benefit of doubt as to whether witness are aware of case.
 - c. Application declined.
5. **Case Law** - Nil
6. **Advocates**

P. Kiprop state counsel instructed by the Attorney General for the state – present
K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & co. advocates for the accused - present

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL CASE 48 OF 2005

REPUBLIC PROSECUTOR
VERSUS
PHILIP KIPKEMOI LELE ACCUSED

RULING
NO.1
Criminal Practice and procedure

I: Background

1. I have an oral application before me requiring the Court to dismiss this case as the witnesses are not before court.
2. The trial began on 6th June, 2006 with assessors by Kimaru J. He did not complete the case. It was instead taken over by Mugo J who proceeded to hear the murder trial case without assessors.
3. On the 17th June, 2009, Mugo J declared the trial a mistrial by relying on the case law of **Peterson Maina Wanjiku V R HCCR 8/06. (unreported) Nyeri CA.**

and the case of **Benard Kinoti M'arachi V R CRA 114/08 (unreported)**

4. It therefore was directed by this court that the matter begin "*De novo*" Hearing dates of 6th October, 2009 was given.
5. The day called out for hearing the accused was absent but was produced to court by order of this court. The witnesses were absent. They were not bonded to attend court. The DCIO Bomet did not avail the witnesses.
6. This court was orally asked to dismiss the case as the witnesses were absent.

II: Findings.

7. The witnesses were availed on 16th June, 2006. They gave evidence. There is no indication that the witnesses are bonded to attend court or aware that the hearing was beginning *De novo*.
8. I accordingly decline the application and order that the witnesses be bonded at the next hearing date.

DATED this 7th day of October, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

P. Kiproo state counsel instructed by the Attorney General for the state – present

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & co. advocates for the accused - present