



REPUBLIC OF KENYA



**Republic v Wambui (Criminal Case E2410 of 2022)
[2023] KEMC 316 (KLR) (8 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 316 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E2410 OF 2022
PA NDEGE, SPM
AUGUST 8, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER KIOKO WAMBUI ACCUSED

RULING

1. The accused person, Peter Kioko Wambui, has been charged before this honorable court with the offence of Preparation to commit a felony contrary to Section 308(1) of the *Penal Code* in count 1 where it is alleged that on 13th day of July 2022 at Free Area in Nakuru East-Sub County within Nakuru County, he was found while armed with dangerous weapons namely one short knife in circumstances that indicated he was so armed with the intent to commit a felony namely stealing. In Count 2, he is charged with Being in possession of cannabis contrary to Section 4(a)(ii) of the *Narcotic Drugs and Psychotropic substances (Control) Act* No.4 of 1994 as amended by *Narcotic Drugs and Psychotropics Substances (Control)(Amendment) Act, 2022*. It is alleged in count 2 that on the 13th day of January 2022, at Free Area in Nakuru East-Sub County, he was found in possession of 25 rolls of cannabis with a street value of Kshs 1,250 in contravention of the said Act.
2. During the time of plea, the accused pleaded not guilty and there by placed the state on notice to adduce the evidence to proof the charge beyond reasonable doubt. In order to prove the contrary of the presumptions of innocence of the accused, the state has presented its case before this honorable court.
3. The hearing commenced before Hon. Y. I. Katambi (PM) who has since been transferred from this station. The court explained Section 200 of the *Criminal Procedure Code* to the accused. In Section 200(3) the accused is allowed to demand for the recall of witnesses. The accused has stated herein that he wanted his case to start a fresh as he wanted to invoke his rights of Section 200 of the (CPC). The accused stated his reason for the application of his case to start a fresh. His reason is that the current trial magistrate is new to the case.



4. In the case of *Joseph Kamau Gichuki vs. Republic* (2013) eKLR, the Court of Appeal stated that:

This Court has previously held that section 200 of the *Criminal Procedure Code* should be invoked sparingly and only in cases where the ends of justice will be defeated if a succeeding magistrate does not continue a trial commenced by his predecessor. Some of the considerations to be borne in mind before invoking section 200 include whether it is convenient to commence the trial de novo, how far the trial had proceeded, availability of witnesses who had already testified, possible loss of memory by the witnesses, the time that had lapsed since the commencement of the trial and the prejudice likely to be suffered by either the prosecution or the accused.

5. The accused stated that he wants to start the case a fresh for reason that the magistrate is new. The court shall rely on the case of *Joseph Kamau Gichuku Vs. Republic* (*supra*) to state that the reason that the accused has given for the case to start a fresh has no merit, and that alone, should not be the basis for the invocation of the provisions of section 200 CPC.

6. To start the case a fresh will delay the course of Justice. Article 159(2)(d) of the *Constitution* states that Justice should not be delayed. This means that a case once initiated should be resolved without unreasonable delay. The *Ndegwa v R* (1985) eKLR was clear that Section 200 of the *Criminal Procedure Code* (CPC) is a provision of the law that is intended to be used sparingly in cases where circumstances are likely to defeat justice.

7. I do not find any circumstances herein that might lead to the defeat of justice if this matter proceeds from where it had reached. No such circumstances have been demonstrated to my satisfaction. In fact, it would instead defeat justice if I order for the trial herein to commence afresh.

8. It is not a requirement of the law that a case should start afresh automatically. What the court is obligated to do is to explain the legal provision as specified. The stated provision of law is supposed to be invoked where justice demands and both parties, the prosecution and accused must be treated fairly.

9. I have decided to comply with the Provisions of Section 200(3) of the *Criminal Procedure Code* to recall the witnesses only for further cross examination by the defense before the matter can proceed from where it had reached to ensure that justice is served accordingly.

10. It is so ordered.

DATED, SIGNED AND DELIVERED IN NAKURU OPEN COURT THIS 08TH Y OF...AUGUST 2023

HON. ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Accused Present

Chinga present for the Prosecution

Janet Court interpreter

HON. ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

Chinga: We taka a mention for the proceedings to be typed



Accused: Let the case proceed as directed. We just leave the recall and we proceed from where it reached.

HON. ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

CT: The proceedings be typed. Mn. 11/09/2023.

HON. ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

08/08/2023

