



**Republic v Ngeno (Anti-Corruption Case E001 of 2020)
[2023] KEMC 319 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 319 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ANTI-CORRUPTION CASE E001 OF 2020
PA NDEGE, SPM
AUGUST 3, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOTHAM KIPKOECH NGENO ACCUSED

RULING

1. Jotham Kipkoech Ngeno, the accused was charged with the offences of abuse of office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Act Number 3 of 2003 in Count 1 and Fraudulent procurement of registration and issue of a title document contrary to Section 157(1)(c) sub section (1) of the Lands Act number 6 of 2012 as read with Section 157(1)(d) of the Lands Act Number 6 of 2012 in Count 2.
2. The accused denied the charges and the trial commenced before Hon. P. Achieng (PM) in Bomet. The trial magistrate was transferred from Bomet and this suit was subsequently transferred to Hon. L. Arika, Chief Magistrate (CM), in Nakuru. Hon L. Arika in her ruling dated 24.03.2021, directed that the 3 witnesses who had testified before Hon. P. Achieng in Bomet, be recalled for further cross-examination by the defense. Several other witnesses then also testified before Hon. Arika who was subsequently also transferred from Nakuru Law Courts. This matter was therefore again reallocated for herein before me.
3. I have again explained Section on 200 of the *Criminal Procedure Code* to the accused. The accused stated that he wanted his case herein to start a fresh as he strictly wanted to invoke his rights of Section 200 of the (CPC). In the case of Joseph Kamau Gichuki v 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”.

4. The accused stated that he wants the case to start a fresh for reasons that the court is new and so is the magistrate. Relying on the case of Joseph Kamau Gichuku v Republic (supra)I find that the reason that the accused has given for demanding that this case to start a fresh has no merit.
5. This case has been in court since 2018 and several witnesses have already testified. Some of the key witnesses had earlier on been recalled for cross-examination and to require them to again come and testify afresh would be to require too much from them. Further, starting the hearing in this the case a fresh will cause delay to the cause of Justice. Article 159(2)(d) of *the Constitution* provides that Justice should not be delayed. This means that a case once initiated should be resolved without unreasonable delay. The case of 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. 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 before me, several years after it had initially commenced.
6. Moreover, it is not a requirement of the law that such cases should automatically start afresh. 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, witnesses and accused must be treated fairly.
7. I have already complied with the provisions of Section 200(3) of the *Criminal Procedure Code* and I do find it mischievous or lack of good faith on the part of the defense to have the witnesses herein recalled for a fresh hearing. That demand by the accused is not in the best interest of a speedier and fair trial as required and I do therefore direct that the matter proceed from where it had reached without re-calling of the witnesses who had testified earlier.
8. It is so ordered.

DATED, SIGNED AND DELIVERED IN NAKURU OPEN COURT THIS 03RD DAY OF AUGUST,2023.

HON: ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

In The Presence Of:

Court interpreter: Janet

Court interpreter: Chinga

Prosecution counsel: Omenta

Defense Counsel: Present

Accused:

