



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Orwaru (Criminal Case 24 of 2020)
[2023] KEHC 1859 (KLR) (Crim) (28 February 2023) (Order)**

Neutral citation: [2023] KEHC 1859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 24 OF 2020**

JM BWONWONG'A, J

FEBRUARY 28, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

PC BECKHAM OSORO ORWARU ACCUSED

ORDER

1. The defence wants the report of Dr Oduor which is on the postmortem examination in respect of the deceased person be produced without calling the maker.
2. The prosecutor objects submitting that they want the pathologist to testify.
Mr Majimbo for the victims supports the prosecution in that regard.
3. The basis of the objection is that the DPP cannot be directed on how to conduct their case and that in this regard they exercise complete independence.
4. This case was registered in 2020. Under article 50 (2) of the 2010 *Constitution* of Kenya “the accused has a right to have the trial begin and conclude without unreasonable delay”.
5. I further find that the mental assessment of the accused was admitted into evidence by consent as prosecution exhibit in the interest of a speedy trial.
6. I have perused the report of Dr Oduor. It is clear as to what caused the death of the deceased. Furthermore, I find that the DPP does not have complete prosecutorial independence on how to conduct



7. the case. Under article 157 (11) the DPP has to exercise his prosecutorial duties having regard to the public interest, the interests of administration of justice and need to prevent and avoid abuse of the court process.
8. Under the 1963 independence Constitution the Attorney General who then discharged the functions of the DPP had to be prohibited from prosecuting the applicant in *Stanley Mungai/ Githunguri v R* (1986) KLR 1 because he was abusing the court process.
9. I therefore find that it is in the interest of the public that the trial of the accused must be conducted in accordance with the constitutional dictates of a fair trial and speedy trial without delay.
10. The admission of the report of the pathologist will not prejudice the production case. In the premises, I hereby overrule the objection by the prosecution.
11. The said report is to be admitted into evidence in the interests of justice.

ORDER SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Court Assistant: Kinyua

Ms Maina and Mr Mulama for the State

Mr Nyakundi & Mr Omenke for the Accused

Mr Majimbo for the victims

Accused: present in person

