



REPUBLIC OF KENYA



**Republic v Sisei & 7 others (Criminal Case 38 of 2020)  
[2023] KEHC 3496 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3496 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 38 OF 2020  
WM MUSYOKA, J  
APRIL 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ERICK KABAKA SISEI ..... 1<sup>ST</sup> ACCUSED**  
**NELSON KHAVERE ..... 2<sup>ND</sup> ACCUSED**  
**DAN ESOLIO SISEI ..... 3<sup>RD</sup> ACCUSED**  
**KELVIN ASENEKA ..... 4<sup>TH</sup> ACCUSED**  
**BONIFACE STUMA EGOVWA ..... 5<sup>TH</sup> ACCUSED**  
**ALICE MINAYO ..... 6<sup>TH</sup> ACCUSED**  
**CATHERINE KAGEHA ..... 7<sup>TH</sup> ACCUSED**  
**TRUPHENA MUHONJA SIVA ..... 8<sup>TH</sup> ACCUSED**

**RULING**

1. When the matter came up for hearing on February 15, 2023, the prosecution indicated that it was not ready to proceed, for it had recorded a statement from a witness in January 2023, which it was yet to make available to the defence. The prosecution counsel, Mr Mbonzo, asked for adjournment, to allow the defence prepare sufficiently to handle that witness.
2. Mr Didi, Advocate for the accused persons, opposed that application. He protested that the witness, whose statement was the subject of the adjournment sought, had been attending court, and had heard the other witnesses testify. He described the application as a gimmick to delay the matter. He asked the court not to admit the statement.



3. In rejoinder, Mr Mbonzo submitted that investigations are a continuous process, and do not terminate once the accused are arraigned. He said that the prosecution case had not closed, and they could call any witnesses with respect to any evidence that that may crop up, and it was within their rights to even have the charges amended. He explained that that particular witness had been missing, he was an eyewitness, and he had been traced.
4. The prosecution has not closed its case, and, therefore, there is room for it to call whoever they wish to call as a witness, so long as the furnish the defence with his statement. The defence appears to be conscious of that, and I note that the only objection that Mr Didi appears to have is that the witness has been attending court, and has heard the other witnesses testify. I shall only limit my consideration to that objection by Mr Didi.
5. Both sides have not identified that witness by name, and I have no material upon which I can gauge whether he or she has been attending court, and listening to the other witnesses. In any case, the mere fact that a witness, who has not yet testified, sits in court while the other witnesses testify, is not a disqualifying factor. It only goes to the credibility of that witness. His evidence would be scrutinised more closely than that of the other witnesses, for the court to satisfy itself that his sitting in court, while the others testified, did not lead him to tailor his evidence to rhyme with what he heard from the other witnesses.
6. I am not persuaded that the defence would suffer prejudice, should that prospective witness testify. Let the prosecution serve the witness statement for that person on Mr Didi. A date shall be allocated at the delivery of this ruling, for mention before the Judge for further directions. It is so ordered.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF APRIL 2023.**

**WM MUSYOKA**

**JUDGE**

Mr Erick Zalo, Court Assistant.

Appearances

Mr Mbonzo, instructed by the Director of Public Prosecutions, for the Republic.

Mr Didi, Advocate for the accused persons.

