



REPUBLIC OF KENYA



KENYA LAW
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Republic v Opwondo & 14 others (Criminal Case 34, 35 & 36 of 2020) [2022] KEHC 16920 (KLR) (23 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 34, 35 & 36 OF 2020
WM MUSYOKA, J
DECEMBER 23, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS OMONDI OPWONDO & 14 OTHERS ACCUSED

RULING

1. The application for determination is dated October 6, 2021, curiously premised on sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya, among others, and it seeks orders that the 3 matters ought not be consolidated, and not be heard together.
2. It is premised on grounds set out on the face of it, and in the affidavit sworn in support by Charles Malalah, Advocate for the accused. It is argued that consolidation would be inimical to the fair trial principles in Article 50 of the *Constitution*, for it is likely to lead to lengthy trials; a balance must be struck between prosecutorial convenience and the right to a fair trial; that although the evidence by the prosecution suggests conspiracy amongst the accused persons in the 3 cases, the same has nothing to do with the individual accused persons; that the prosecution has individual witnesses for each of the 3 cases; that the cases relate to murder of 3 different individuals; and that there is not enough to make them similar.
3. Kakamega HCCRC No 34 of 2020 has Francis Omondi Ndege, Stanley Imbiakha, Simon Kava Efumbi and Kevin Wakhanu Imbiakha as the accused, and the deceased in that case is Fred Opwondo. Kakamega HCCRC No 35 of 2020 involves Anthony Osany Ndege, Benard Wakwauvi, Ali Keya Mulingala, Henry Ndege Opwondo, Godfrey Anakuta Opwondo and Davis Muganda Saya alias Andrew Ektutu, as accused persons, while the deceased is Calistus Weremba. The accused in Kakamega HCCRC No 36 of 2020 are Denshas Opondo Imbiakha, Kevin Wakhanu Imbiakha, Francis Omondi Ndege, Simon Kava Efumbi and Stanley Imbiakha, and the deceased person is Peter Ndege Opwondo. The cases charge the killing of 3 different individuals, and the accused persons are different in each



case, except for Stanley Imbiakha, Simon Kava Efumbi and Kevin Wakhanu Imbiakha who appear in 2 of the cases.

4. The offences were allegedly committed on the same date and at the same locality. That is to say August 14, 2020, at Emasinga village, Shinoyi Sub-Location, Butso West Location, in Navakholo Sub-County, Kakamega County. The witnesses listed appear to be different for each case, except for IP John Sichele.
5. To the extent that the 3 cases relate to different deceased persons, and the accused persons are diverse, with diverse witnesses, it would be prudent to try each separately. I agree, it will be fairer to do so, to ensure speedier, and less windy trials, than where all 3 cases are handled together, bringing together different facts and diverse individuals. It would also make it easier for the court to do justice in each case, where it would not have to handle a mountain of documents, juggle numerous facts and consider the rights and interests of diverse accused persons, and victims.
6. I am persuaded that the application dated October 6, 2021 is for granting. The Republic did not oppose it. I allow it as prayed. Let the 3 cases proceed separately. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS23rd
..... DAY OFDecember..... 2022**

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Malalah, Advocate for the accused person.

