



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC CRIMINAL APPLICATION 50 OF 2018

IN THE MATTER OF ARTICLE 50 OF THE CONSTITUTION

IN THE MATTER OF THE WITNESS PROTECTION ACT

IN THE MATTER OF THE WITNESS PROTECTION RULES, 2015

AND

IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION

REPUBLIC.....EXPARTE APPLICANT

RULING

1. By a chamber summons dated 30th July, 2018 supported by the affidavit of **JOSHUA LOPOGHON**, the State seeks order for witness protection in respect of witnesses in **Kisumu High Court Criminal Case No.11 of 2018** which is scheduled for hearing before the High Court in Kisumu. Applicant seeks the following orders: THAT

- 1. Witness statements be redacted before being supplied to the accused person**
- 2. Witnesses identity be concealed and to give testimony behind a screen**
- 3. Witnesses to use pseudonyms during the hearing of their testimonies**
- 4. This file be kept under lock and key**

2. The basis for these prayers is that unless the protection orders are issued, there is a high risk of the witnesses being intimidated, threatened and/or harmed; that protection will improve the quality of the witnesses' evidence and further that the memorandum of understanding under Section 7 of the Witness Protection Act, between the witness and the Witness Protection Agency is in the process of being signed.

3. In the supporting affidavit of **JOSHUA LOPOGHON** (a Protection Officer attached to the Witness Protection agency [WPA], he deposes that upon receiving a referral for protection from the Director of Public Prosecutions in Siaya, dated 28th May, 2018, he conducted a risk assessment on the protected persons and established that there has been an attempt to intimidate and dissuade witnesses from testifying as a result of the evidence they have agreed to give in support of the prosecution case.

4. Upon receipt of the referral, a risk assessment established that some of the witnesses are eye witnesses and are crucial to the prosecution case as per the annexed forms marked JL2.

5. The protection officer avers that the witnesses have agreed to testify on condition that they are assured of their safety and be accorded protection measures.

6. **Section 4 of the Witness Protection Act (Cap 79)** provides that: -

“The witness protection agency may request the court to hold proceedings in camera/closed sessions, use pseudonymous on

the witness, reduction of identity information of witness use of video link or distort the identity of a witness.”

7. The considerations the High Court must consider in a prayer of this kind are set out in Rule 4 (3) of the Rules include inter alia that: -

(a) the person before the Court or named in the application is a

witness;

(b) the person was a witness to, or has knowledge of an offence and is, or has been a witness in criminal proceedings relating to the offence;

(c) the person was or is a witness in any other proceeding;

(d) the person is a person who, because of their relationship to, or association with, a person to whom subparagraph (a), (b) and (c) applies, may require protection or other assistance;

(e) the life or safety of the person may be endangered as a result of being a witness;

(f) the protection measures alone or in combination shall most likely maximize and improve the quality of the eligible witness's evidence in the circumstance of the case;

(g) a memorandum of understanding has been entered into by the witness in accordance with section 7 of the Act.

8. Under **Article 50 (1) (d)** the right to a fair trial includes **inter alia**, a public trial. However, this provision is not to be read in isolation but alongside **Article 50(8)** which envisages a section for protection of witnesses or vulnerable persons. This is the kind of scenarios obtaining here.

9. I take judicial notice that accused in the murder case is a senior police officer. I am satisfied that the apprehension is real.

10. It is therefore hereby ordered that: -

- 1. Witness statements in Kisumu High Court Criminal Case No.11 of 2018 be redacted before being supplied to the accused person**
- 2. Witnesses identity be concealed and to give testimony behind a screen**
- 3. Witnesses to use pseudonyms during the hearing of their testimonies**
- 4. This file be kept under lock and key**

Delivered and dated at Kisumu this 31st day of July 2018

T. W. CHERERE

JUDGE