



REPUBLIC OF KENYA



Republic v Odak (Criminal Case E031 of 2024) [2025] KEHC 4101 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E031 OF 2024**

A MABEYA, J

APRIL 2, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL OTIENO ODAK ACCUSED

RULING

1. This ruling determines the oral application made by the state on the 19/3/2025 through Learned State Counsel Mr. Kipruto, for the consolidation of this matter with Ksm Criminal Case No E038 of 2024, Republic v Oliva Ochieng Jaoko alias Oliveti. Learned Counsel based his application on section 135 (1) of the *Criminal Procedure Code*.
2. The accused has been charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, the particulars of the offence is that on the 1st day of July 2024 at around 0730hrs at Kibuye market in Kisumu Central sub-county within Kisumu County, the accused murdered one Mohammed Omar.
3. The accused pleaded not guilty to the offence and prior to the case proceeding, Learned State Counsel sought the said consolidation. He submitted that the consolidation was necessitated because of the fact that the deceased in both cases was the same individual; that the witnesses and documents to be relied on at the trial were the same; that the incident of the deceased's murder in both cases happened on the same day and that the only differences was the date of arrest of both accused persons in both criminal cases.
4. He further submitted that there was no convincing reason of the prejudice to be suffered by the accused persons in the event of consolidation the two cases. Learned Counsel relied on the case of *Augustine Kinyua Ita & another v Republic* [2022] eKLR in support of the submission that the essence of consolidation was for efficiency, fair and impartial delivery of justice as it would fast track the cases.



5. The application was opposed by the defence. Mr. Oregu, Learned Counsel for the accused in this case submitted that the consolidation was likely to cause a mistrial to the accused and that if the state intended to charge both the accused persons together, it would have drawn one information.
6. Mr. Lore, Learned Counsel for the accused in Ksm Criminal Case No E038 of 2024 similarly opposed the application for consolidation. He submitted that no basis had been laid for the consolidation. That criminal liability is personal and individual and that the accused persons should not be entangled with each other.
7. Mr. Lore relied on Article 50 of the Constitution of Kenya and submitted that each accused person deserves a fair trial. That if at the commencement of any trial, an accused person feels that he may be implicated by another person, consolidation should not be made so as to avoid undue prejudice. Counsel urged the Court to disregard the authority relied on by Counsel for the prosecution.
8. I have considered the application by the State. Section 135 (1) of the Criminal Procedure Code (cap 75) Laws of Kenya, that deals with consolidation of cases provides as follows: -
 - “(1) Any offences, whether felonies or misdemeanors, may be charged together in the same charge or information, if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.”
9. In Law Society of Kenya v The Centre for Human Rights and Democracy (2013), the Supreme Court of Kenya stated as follows: -
 - “The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”
10. In Augustine Kinyua Ita (supra) quoted the Supreme Court of India, in the case of Prem Lala Nabata & v Chandni Prasad Sikaria (2007) where it was stated as follows: -
 - “... Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the Court that, some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.”
11. From the foregoing, it is clear that joint trial may be permissible where the actions emanate from the same event, act or transaction; involve the same or like issues and depend substantially on the same evidence provided that the joint trial will not prejudice the rights of the accused.
12. Further, consolidation will be ordered where the offences charged are similar or related or are of the same character or arose out of the same act or related or connected acts, transactions, series of events or acts or transactions constituting parts of a common scheme or plan, or where much of the evidence to be produced is the same and will be a reproduction of the same in each trial.



13. In the present case, I have considered the two cases. The accused persons are charged with the same offence of murder. The dates of the occurrence of the offence in both cases are the same, the offence is stated to be committed at the same time and within the same area in both cases and therefore, the witnesses are said to be the same.
14. Taking into consideration all the foregoing, I note that section 135(1) of the *Criminal Procedure Code* (cap 75) Laws of Kenya, provides for consolidation of criminal cases. Under the said provision, consolidation is permitted if the cases are founded on similar facts or form part of a series of offences, where the offences are of same character and have similar witnesses.
15. Although Learned Counsels for the accused alluded to the likelihood of prejudice to be suffered by their clients, the nature of prejudice was not stated or proved. It is the Court's opinion that no prejudice will be suffered since the accused persons will be supplied with the witness statements in advance and it will be convenient to have a joint trial as the same will be expedited.
16. In this regard, the Court finds that this is a suitable case where the Court ought to exercise its discretion and allow consolidation of both cases. Accordingly, I make the following order: -
 - a. That this case, Kisumu Criminal Case No E031 of 2024 - Republic v Samuel Otieno Odak be and is hereby consolidated with Kisumu Criminal Case No E038 of 2024 – Republic v Oliva Ochieng Jaoko alias Oliveti.
 - b. That the accused shall take fresh plea to the same information already prepared by the prosecution.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 2ND DAY OF APRIL, 2025.

A. MABEYA, FCI Arb

JUDGE

