



**Republic v Owino (Criminal Case E006 of 2024)
[2025] KEHC 6297 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E006 OF 2024**

**A MABEYA, J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL OWIRA OWINO ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to section 103 as read with section 104 of the Penal Code. He pleaded not guilty and pre trials seem to have been completed prior to 4/6/2024 when the trial began.
2. A total of 9 witnesses have testified and Pw10, a government analyst took the stand this morning. Before she could testify, Mr. Owino, Learned Counsel for the accused has objected to the witness referring to a Government Analyst Report dated 8/5/2025. The basis of the objection is that Learned Counsel had not been warned on the existence of the said report. That the same has only been shown to him this morning.
3. He further noted that on 4/6/2024, the prosecution had indicated that it was to parade only 9 witnesses. That one witness has already been sneaked in and Pw10 is an additional one. He prays that the report be barred.
4. Ms. Kagali for the State has implored the Court not to heed the application by the defence. That the information in this matter did not disclose the actual number of witnesses to be paraded and that the report had been alluded to during the trial. That Pw10 may be stood down to give counsel time to study the report.
5. I have considered the objection and the response thereto. I have also considered the record. I note that there is no pre-trial porse that was undertaking in this matter. There is no indication as to how many witnesses were to testify. There is no indication of the documents that were to be relied on.



6. Article 50(2) of the *Constitution* of Kenya provides for fair trial. Fair trial includes the right not to be ambushed. That an accused must be accorded all facilities possible to enable him prepare his defence. That the evidence to be relied on be supplied to the accused beforehand.
7. In the present case, no doubt the record shows that the Court did direct that the defence be supplied with witness statements and all documents to be relied on. Ms. Kagali indicates that although the government analyst Report was sought for since February, 2024, not until 12/5/2025 was it availed. That there had been a que at the Government Chemist, Kisumu thereby clogging the system. That the delay is not deliberate on the part of the State.
8. I note that nowhere on record was this report alluded to. Bu I also note that nowhere were the total number of witnesses disclosed to the defence which was a blot in the proceedings. I accept that where an accused right to fair trial is threatened the Court should move fast and stem such a threat.
9. The present report is shown to have been prepared only 7 days ago. Can it be said that the State wants to patch up its case upstream? I do not think so. The Exhibit Memo is said to have been submitted to the Government Chemist, Kisumu for analysis in February, 2024. That is before even the trial had commenced. It was exactly 4 months before the trial. The reason given for the delay is that there was a que at the Kisumu Government Chemist which had caused the delay in its issuance.
10. Since there is no evidence that Pw10 is being sneaked in by the State and in the interest of justice, I will decline to bar the witness from testifying. But will order that Pw10 be stood down to give Learned Counsel for the defence, Mr. Owino time to study the report and adequately prepare his defence.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF MAY, 2025.

A. MABEYA, FCI Arb

JUDGE

