



**Republic v Akiri & 3 others (Criminal Revision E005 of 2025)
[2025] KEHC 8787 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E005 OF 2025**

A MABEYA, J

JUNE 20, 2025

BETWEEN

REPUBLIC APPLICANT

AND

PAMELA AWUOR AKIRI 1ST RESPONDENT

EZEKIEL OCHUKA ADOYO 2ND RESPONDENT

DAVID OBONYO MRERI 3RD RESPONDENT

FOCUS BUILDING & CONSTRUCTION CO. LTD 4TH RESPONDENT

RULING

1. On 30/1/2020, the State charged the respondents with a total of 12 offences under the [Tax Procedures Act](#), 2015. They related to non-payment of taxes amounting in excess of Kshs.42 million by the 4th respondent.
2. In a Charge Sheet dated 30/1/2020, the state disclosed that it will call the following witnesses; Bon Wambura, Bank Manager, Registrar of Companies, CPL Lokeno, IP Rotich and others to be stated.
3. On 4/11/2024 when the matter came up for hearing, the prosecution applied for adjournment to enable it call the Registrar of Companies as a witness. This was strenuously objected to by the defence on the grounds that the witness had not been listed and had not recorded a statement. That it amounted to ambush and will prejudice the rights of the accused under Article 50 of the [Constitution](#).
4. In a ruling delivered on 6/2/2025, the trial court upheld the objection. The Court observed that the matter had been in court for long, that allowing the prosecution to call the Registrar of Companies would prejudice the rights of the accused under Article 50 of the [Constitution](#) which included the right to be informed in advance the evidence to be relied upon. It ordered that the prosecution does restrict itself to the witnesses it had disclosed.



5. The prosecution was aggrieved by that decision and applied for the revision thereof under Article 165 of the Constitution and section 362 of the Criminal Procedure Code. In the Motion dated 19/2/2025, the prosecution contended that the order of 6/2/2025 infringed on its right to a fair trial under Article 50 of the Constitution, that it had disclosed the Registrar of Companies as a witness in the Charge Sheet, that it had supplied the defence with Form No. CR12 which is the evidence that the Registrar was to produce in court and that in any event, the Registrar was in the nature of an expert witness who needed not record any witness but only produce government records.
6. The parties filed their respective submissions which are on record and which the Court has considered. This is an application for revision. The prosecution has sought this court's exercise of its jurisdiction under section 362 of the Criminal Procedure Code. That section provides: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
7. To begin with, the Registrar of Companies is not an individual. That is an office under the Office of the Attorney General and Department of Justice in the Government of Kenya. It is under the Department of Business Registration Service. The Charge Sheet dated 30/1/2020 that was produced before this Court and which is the basis of the charges before the trial Court, was categorical of the witnesses that were to be called. While witnesses No. 1, 4 and 5 had their names disclosed, witness nos.2 and 4 were disclosed as Bank Manager and Registrar of Companies. Their respective names were not disclosed.
8. In addition, it was contended and not denied that, Form No. CR12 dated 19/11/2019 was amongst the documents that were supplied to the defence at the pre trial stage. The prosecution contended that this was the evidence the Registrar of Companies was expected to produce when called. That the said document contained information in the possession of the Registrar which he/she was to testify on.
9. It was not contended by the defence that upon receipt of the Charge Sheet dated 30/1/2020, it protested for the failure to disclose the name(s) of the officer(s) from the Registrar of Companies who was to be called as a witness. It is understandable that such a protest would not have had any basis as the Registrar of Companies is an office and not an individual. Further, having been supplied with a copy of Form CR12 dated 19/11/2019, that was adequate disclosure of the evidence that the Registrar was to produce. This Court is unable to fathom the extent of disclosure that would have been required in this case to fit or satisfy Article 50 of the Constitution of Kenya as opined by the trial Court.
10. The crucial question which this Court should determine is, whether the accused's right to fair trial would have been violated were the Registrar of Companies appeared and testified? Article 50(2) of the Constitution provides: -

“Any accused person has the right to a fair trial which includes the right: -

 - (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence.”

The letter and spirit of this provision is that an accused should be furnished with all the witness statements and exhibits which are to be relied on in the trial. The reason for such is to avail the accused sufficient time and facilities to enable him/her prepare his/her defence and challenge the prosecution's evidence at the opportune time, both in cross-examination and in his defence.



11. In the present case, the prosecution had disclosed in the Charge Sheet that it was to call the Registrar of Companies as a witness. It provided copies of Form CR12 for the 4th respondent. It was contended that both the Memorandum and Articles of Association and Form CR12 of the 4th respondent had been marked by the prosecution witnesses who had already testified and were to be produced by the Registrar of Companies. Can it then be said that the respondent's rights to fair trial was to be infringed in the circumstances? I do not think so.
12. In view of the foregoing, I hold and find that the Court's order of 6/2/2025 was irregular as the Registrar of Companies had been disclosed as a witness and his/her evidence had been disclosed in advance by way of Form CR12 dated 19/11/2019. There was no reason for him/her to have recorded any statement as his/her evidence was contained in the said Form CR 12.
13. Accordingly, I allow the Motion dated 16/2/2025 and do revise and set aside the order of 6/2/2025 in Winam Criminal Case No. 107 of 2020 Republic vs Pamela Awuor & 3 Others. I direct that the prosecution is entitled to call the Registrar of Companies as a witness.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

