



**In re Application for Orders for Witness Protection (Miscellaneous Application  
27 of 2025) [2025] KEHC 12606 (KLR) (2 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS APPLICATION 27 OF 2025**

**AK NDUNG’U, J**

**SEPTEMBER 2, 2025**

**IN THE MATTER OF ARTICLE 50 OF THE CONSTITUTION  
IN THE MATTER OF THE WITNESS PROTECTION ACT  
IN THE MATTER OF WITNESS PROTECTION RULES, 2015**

**AND**

**IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION**

**IN THE MATTER OF**

**REPUBLIC ..... APPLICANT**

**RULING**

1. Vide an ex parte Chamber Summons dated 1<sup>st</sup> September 2025, the applicant moved this court for orders;
  1. Spent
  2. Spent
  3. That this Honourable court be pleased to grant witness protection orders for the identity of the protected witnesses in Criminal Cases No. SO E001/2025, Police Case No. 445/001/2025 and Criminal Case No. SO E 008/2025 before the Chief Magistrates Court at Wanguru to testify in camera/ closed session and through video link technology which shall be a special camera concealed video link specially generated by the Hybrid court for the particular hearing of the protected witness.
  4. That this Honourable court be pleased to grant witness protection orders to allow for the redaction of any identifying information from the witness’ statements in Criminal Case No. SO E001/2025, Police Case No. 445/001/2025 and Criminal Case No. SO E 008/2025 before



the Chief Magistrates Court at Wanguru, and related documentation, and further, that such identifying information be expunged from the Court's public records.

5. That this Honourable court be pleased to grant witness protection orders for the protected witness in Criminal Case No. SO E001/2025, Police Case No. 445/001/2025 and CF Criminal Case No. SO E 008/2025 before the Chief Magistrates Court at Wanguru to give evidence with the assistance of an intermediary (Psychosocial Officer) from the Witness Protection Agency.
  6. That the witness protection order be filed in the respective court file, in Criminal Case No. SO E001/2025, Police Case No. 445/001/2025 Criminal Case No. SO E 008/2025 and Criminal Case No. SO E 008/2025 before the Chief Magistrates Court at Wanguru, which should be brought to the attention of the Magistrate of the court hearing the matter.
  7. That the miscellaneous application file germane to this application be kept under lock and key and be accessible only to the Court and the Witness Protection Agency.
  8. That this Honourable court be pleased to grant any such orders it deems fit in the circumstances.
2. The application is based on grounds;
1. That the applicant has under its protection crucial witnesses in Criminal Case No. SO E001/2025, Police Case No. 445/001/2025 and in Criminal Case No. SO E 008/2025 before the Chief Magistrates Court at Wanguru
  2. That the witnesses are in danger as a result of the evidence they have agreed to give in support of the prosecution case.
  3. That unless protection orders are granted, there is a high risk of the crucial witness being threatened, intimidated and or harmed.
  4. That a Memorandum of Understanding under section 7 of the *Witness Protection Act* and Regulations thereto has been signed on behalf of the Child Witness and the mother is in the process of signing hers.
  5. That it is in public interest and justice that protection orders be issued to protect the witness.
3. It is further supported by the affidavit of LM, a Senior Protection officer attached to Witness Protection Agency, the gist of which is that upon risk assessment, she established that the referred witness is a minor and a victim of the offence in Criminal Case No. SO E001/2025 before the Chief Magistrate at Wanguru and that her life is in danger as a result of the evidence she agrees to give in support of the charges. The risk assessment form is exhibited.
4. Further, that an uncle of the victim also faces similar charges in SO E008/25 before the same court.
5. It is deponed that the victim's parent is listed as a witness in the charge sheet and therefore requires special court protection and that there have been actual threats to the victim and the family from the sympathizers of the accused persons.
6. She adds that the victim and the parent have agreed to testify against the accused on the assurance of their safety and if accorded adequate court protection during the hearing.



7. I have had occasion to consider the application, the grounds raised and the facts as set out in the supporting affidavit. Of determination is whether the applicant meets the legal threshold for the grant of the orders sought.

8. Suffice to note that witness protection is a constitutional imperative which has since been effectuated by the enactment of legislation, the *Witness Protection Act*.

9. The objects of the *Act* as stated in its preamble are;

“An Act of Parliament to provide for the protection of witnesses in criminal cases and other proceedings to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes”

10. Section 4 (3) of the *Witness Protection Act* provides :-

“(3) The Agency may request the courts, in support of the programme, to implement protection measures during court proceedings which measures may include but not be limited to—

- (a) holding in camera or closed sessions;
- (b) the use of pseudonyms;
- (c) the reduction of identifying information;
- (d) the use of video link; or
- (e) employing measures to obscure or distort the identity of the witness.”

(8) The High Court has the power to make a witness protection order by taking into consideration certain factors which are stated in Section 16 of the said Act as follows:

“The High Court may make a witness protection order if it is satisfied that-

- (a) the person named in the application as a witness-
  - (i) was a witness to or has knowledge of an offence and is or has been a witness in criminal proceedings relating to the offence; or
  - (ii) is a person who, because of his relationship to or association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act;
- (b) the life or safety of the person may be endangered as a result of his being a witness;
- (c) a memorandum of understanding has been entered into by the witness in accordance with section 7; and



(d) the person is likely to comply with the memorandum of understanding.”

11. The mainstay of the present application is the safety of the witnesses. It is a cardinal consideration in weighing the need for a protection order. Section 16(b) puts it in the following terms;

where...the life or safety of the person may be endangered as a result of his being a witness;

12. Further, the constitution and the law are clear that if the concealing of the identity of a witness is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, it is a justifiable measure, and therefore, not a violation of right to fair trial.

13. As aptly put by Lenaola J (as he was then) in the case of *In the Matter of Application for orders for Witness Protection* [2014] eKLR redacting of a witness statement is permissible in certain circumstances. The Learned Judge stated;

“The redacting of Witness Statements to exclude the witnesses' personal details such as the name, address and other personal particulars does not in my view amount to a contravention of the provisions of Article 50(2)(j). The Accused persons will have the substance of the evidence to be adduced at the trial which is the tenet of protection accorded by this provision”.

14. On the material before court and applying the same within the context of the applicable constitutional and statutory dictates, am satisfied that the life and safety of the victim and the witness are endangered and the orders sought are necessary and merited for the protection of the victim and the parent since there is a clear demonstration of a real risk of harm to them and the likelihood that they may not volunteer to testify in support of the prosecution's case thus hampering the administration of justice.

15. In reaching the above conclusion, I have considered the actual threats made, the familial relationship between the victim and the witness with one of the accused, and, the close proximity to the victim and witness of the other accused who is a neighbor.

16. With the result that the application herein has merit and is allowed. Orders are to issue in terms of prayers 3,4, 5,6 and 7.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF SEPTEMBER 2025**

**A.K. NDUNG'U**

**JUDGE**

