



**Republic v Waweru & another (Criminal Case 17 of 2020)
[2024] KEHC 3241 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE 17 OF 2020**

AC MRIMA, J

APRIL 5, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ALEX WAWERU ALIAS KALULU 1ST ACCUSED

SAMUEL MUIGAI NJUGUNA 2ND ACCUSED

RULING

1. This ruling is in respect of an application by the Prosecution which was made during the testimony of a witness one Paul Muraguri Karanja who testified as PW6.
2. The application was a quest to declare PW6 as a hostile witness. The basis of the application was the State's assertion that the witness account in Court was contrary to the statement he rendered to the police.
3. The application was opposed by the Defence Counsel who urged that the witness be accorded time to explain what happened.
4. This Court has considered the application.
5. It is the Court which has the discretion to grant or decline such an application. In *Coles vs. Coles*, (1866) LR IP & D 70, 71 Sir J. P. Wilde stated that: -

A hostile witness is one who from the manner in which he gives evidence shows he is not desirous of telling the truth to the Court.

6. Such a witness is usually regarded as unreliable and his/her evidence can only be given very little weight if at all any. (Also see *Bataler vs. Uganda* (194) EA 402).



7. For a Court to be able to make a finding on the hostility or otherwise of PW6, the witness must be accorded an opportunity to fully tender his evidence. The evidence must also be subjected to cross-examination and possibly re-examination. It is after such a process that the Court will be in a position to decide on the application.
8. Since declaring a witness as hostile has possible repercussions, it is only appropriate that such a witness be first thoroughly examined.
9. Having said as much, this Court finds that the application to declare PW6 as a hostile is premature. The same is declined at this point in time.
10. The witness, PW6, shall forthwith proceed on with his testimony.
Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 5TH DAY OF APRIL, 2024.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Mr. Kimani, Learned Counsel for the Accused.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

