



**Republic v Wekesa (Criminal Case E017 of 2022)
[2024] KEHC 9874 (KLR) (2 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E017 OF 2022**

REA OUGO, J

JULY 2, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON MUTORO WEKESA ALIAS WAWIRE ACCUSED

RULING

1. Simon Mutoro Wekesa alias Wawire, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. He pleaded not guilty and the case has been ongoing. So far the prosecution has called three (3) witnesses.
2. On 15.3.2024 PC W Caroline Jepkoech of DCI Webuye East Divisional, the investigator in this case filed an affidavit seeking cancellation of the accused person’s bond. She depones as follows; the matter was brought to court on 28.6.2022 and the first hearing was set for 13th October 2022 followed by eight hearings. 3 witnesses testified. On 29.2.2024 the wife of the accused Catherine Nanjala Koech and her stepdaughter namely Christine Wekesa Weusi failed to attend court to give evidence against the accused who is the husband and the biological father respectively. The accused person who is related to the key witnesses stated above has interfered with the said witnesses thereby relocating them to an unknown area making it hard for the investigating officer to trace and bond the witnesses to attend. She prays that the court cancels the bond for the accused person and remand him to prison until the case is determined so that the witnesses can be traced and bonded to appear before the court to testify.
3. The application was opposed. The accused filed a replying affidavit dated 8.4.2024. he depones as follows; the application is not only incompetent, and frivolous but an outright abuse of the court process. At no time has he ever interfered with the witnesses as alleged by the investigations. Since he was arrested and released on bond he has never stepped at the home where the alleged incident took place and he has never come across the witnesses mentioned. The alleged witness relocated to an unknown place when he was arrested and never even came to see him in prison. Since his arrest,



he has not had any contact with the alleged witnesses. On the 23.2. 2024 the DCI called him and he accompanied him to Celestine Nanjala Koech's parents' home to go and look for her but she was not there. The DCI also went to his place of work at Butali and confirmed that she was not there. He has adhered to the bond terms granted by the Court. No sufficient reasons have been given to warrant the issuance of the orders. The applicant has to make sure that witnesses who record statements come to court and not the accused person.

4. Parties canvassed the matter by way of oral submissions. Miss Matere submitted as follows; the case has been in court since 2022 and the original investigating officer has since been transferred and the current investigating officer PC Caroline Chepkoech. There has been a delay in the proceedings as the 2 critical witnesses who are eyewitnesses Celestine Nanjala and Christine Wekesa cannot be traced for bonding so that attend court and testify. The 2 witnesses are the wife and daughter of the accused. According to the investigating officer considering the close relationship between the accused and the witnesses she believes that the accused has interfered with the witnesses such that they cannot be found in their previous home as well as through their phone numbers that Celestine gave at the police station when she wrote her statement. Further after the commission of the said offense the accused moved the 1st wife and child who was a minor. The application is also made in the interest of justice. The reasons given are compelling reasons as required by the *Constitution* to ensure that the accused person and the victims in the matter. It was further submitted that the replying affidavit is a mere denial considering the weight of the matter.
5. Mr. Onyando responded as follows in brief; the prosecution's application has no merit. The accused has always availed himself in court. The investigating officer has to secure the prosecution witness. There is no proof of interference on the part of the accused. The accused has not been in contact with the alleged witnesses. The prosecution has not made any complaint against the accused person. The application is an abuse of the court process. Reliance was made on the case of *Elphas Otiende alias Otina and another* [2020] eKLR.
6. I carefully considered the application before me, the rival affidavits, the law cited, and case law and I find as follows; the applicant alleges that the accused has contributed to the non-appearance of their witnesses, who are his wife and daughter. At one time they were set to come to court and they failed to. The accused must know their whereabouts as they cannot be traced. I am not persuaded that this court should cancel the bond of the accused. The prosecution has failed to demonstrate to this court that the accused has interfered with the disappearance of the two crucial witnesses. Merely alleging that he knows there were witnesses without tangible evidence on the same is not persuasive. Valid interference has not been shown on the part of the accused person to warrant cancellation of his bond. The applicant has also failed to persuade this court that there is a compelling reason (s) sufficient to be granted the orders they seek. The accused has dutifully attended all court sessions. The investigating officer has to trace the witnesses. The application lacks merit and is dismissed.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON 2ND DAY OF JULY 2024.

R.E.OUGO

JUDGE

In the presence of;

Accused in person

Mr. Shikhu h/b for Mr. Onyando for the Accused

Miss Matere for the Prosecution



