



**Witness Protection Agency (Criminal Miscellaneous Application
E002 of 2024) [2024] KEHC 10916 (KLR) (11 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10916 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024

AC BETT, J

SEPTEMBER 11, 2024

IN THE MATTER OF ARTICLE 50 OF THE CONSTITUTION

AND

IN THE MATTER OF THE WITNESS PROTECTION ACT

AND

IN THE MATTER OF WITNESS PROTECTION RULES, 2015

AND

IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION

WITNESS PROTECTION AGENCY APPLICANT

IN THE MATTER OF

WITNESS PROTECTION AGENCY APPLICANT

RULING

1. The Applicant approached this court by way of Chamber Summons, ex-parte, brought under Article 50 of *the Constitution* of Kenya, 2010, Rule 3(1),(2) of the High Court (Practice and Procedure) Rules, Section 16 of the *Witness Protection Act*, Regulation 5(6) of the Witness Protection Regulations, 2011, Rules 4,5,9 and 13 of the Witness Protection Rules, 2015 seeking the following orders;
 - a. That the Honourable Court be pleased to grant witness protection orders for the redaction of identifying information of the protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR E134/2024 before Madiany Law Courts before being supplied to the accused persons



- b. That the Honourable Court be pleased to grant witness protection orders for the protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany Law Courts to use pseudonyms during his testimony and other appearances before court.
 - c. That the Honourable Court be pleased to grant witness protection orders for the protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany Law Courts to testify in camera or closed session using a witness protection box.
 - d. That the Honourable Court be pleased to grant witness protection orders for the identity of the protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany Law Courts to be concealed and to use voice distortion while giving his testimony.
 - e. That the Honourable Court be pleased to grant witness protection orders for the protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany Law Courts to give testimony through a special camera concealed video (virtual) link specifically generated for the particular hearing of the protected witness.
 - f. That the witness protection order be filed in the respective court files HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany law Courts and be brought to the attention of the Magistrates and Judge hearing the matters.
 - g. That the Miscellaneous Application file germane to this application be kept under key and lock and be accessible by the Witness Protection Agency and the Court only.
2. The application is founded on grounds inter-alia that the Applicant has a crucial witness in HCCR E017 before Siaya High Court, CR. E135/2024 and CR. E134/2024, both before Madiany Law Courts, under its protection. The Applicant avers that the protected witness' life is imperiled due to the evidence he has agreed to furnish in support of the prosecution's case and that unless protection orders are granted, there is a grave risk of the witness suffering intimidation, harm, or interference with the witness's evidence.
 3. Further, the Application is based on the premise that a Memorandum of Understanding has been entered with the protected witness, in accordance with Section 7 of the *Witness Protection Act*, and it is thus in the interest of justice that protection orders be issued to safeguard the witness and thereby enhance the quality and efficacy of his testimony.
 4. The Application is supported by an affidavit deposed by Rose Karanja, a Protection Officer affiliated with the Applicant, who attests that the agency received a referral for protection of the witness from the Directorate of Criminal Investigation, Rarieda. Following a risk assessment conducted by herself, she established that the witness was a pivotal figure as he was present at the scene when the alleged incident occurred.
 5. It is this incident which led to the accused persons being charged with the offences of murder contrary to Section 203 as read with Section 204 of the Penal Code, Being in possession of uncustomed goods contrary to section 200(d) of the East Africa Community Customs Management Act, 2004 and Assaulting police officers in due exercise of duties contrary to section 103(a) of the *National Police Service Act*.
 6. I have considered the Application; affidavit evidence and annexures thereto and proceed to render the following determination;



7. Section 16 of the Witness protection Act provides 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 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.”

8. The grounds set forth in the application are elucidated out in the supporting affidavit, and on perusal, it is evident that the subject witness and the accused persons all hail from the same locality.
9. The evidence presented posits that following the accused persons’ arrest, the protected witness has been subjected to threats from both the accused persons and their sympathizers which have compelled him to relocate with his family for fear of their safety. This underscores the necessity of this application.
10. The Court has taken due notice of the fact that the witness has entered into a Memorandum of Understanding with the Witness Protection Agency and has no cause to doubt their future compliance should the orders sought herein be granted.
11. Prayers (a), (b) and (d) of the instant application seek orders for redaction of the identifying information of the protected witness from the statements to be provided to the accused, the use of pseudonyms by the witness during trial and concealment of the witness’s identity with voice distortion during testimony .
12. In this regard, the court has taken into consideration the provisions of Article 50(2)(j) which provides for the right to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence; and has also weighed the imperative need to protect the lives and safety of the witnesses.
13. The Court does not foresee any serious prejudice that the accused persons may suffer by holding the trial in camera or in closed sessions for the sake of protecting the witnesses as they will still have a chance to cross-examine them.
14. Further, the redaction of Witness Statements to exclude the witnesses’ personal details such as the name, address and other personal particulars does not in the Court’s view, contravene Article 50(2)(j). In any event, the accused persons will retain access to the substance of the evidence to be adduced at the trial which is the tenet of protection accorded by this provision.
15. The Court is also satisfied and finds that the use of pseudonyms during trial does not, in any way, infringe upon the accused’s rights as safeguarded under Article 50 of the Constitution of Kenya, 2010.



16. In respect of prayer (c) and (e) seeking orders that the protected witness testify in camera and to accordingly give testimony through a special camera concealed video (virtual) link, this Court has further addressed its mind to the rights of the accused safeguarded under Article 50 of *the Constitution*, which guarantees the rights of the accused to a fair trial, inclusive of a public hearing. This provision is however qualified by the provisions of Article 50(8) which provides as follows;

“This article does not prevent the exclusion of the press or other members of public from any proceedings if the exclusion is necessary, in a free and democratic society to protect witnesses or vulnerable persons, morality, public order or national security.”

17. Furthermore, on the basis of the risk assessment report prepared in respect of the protected witness, I am persuaded that it would be justified for his protection, to exclude members of the public during the trial proceedings when the said vulnerable witnesses will give evidence.

18. In view of the above, I find that the application is meritorious and therefore allow it in the following terms:

- a. A witness protection order be and is hereby issued for the protected witness in Siaya High Court Criminal Case No E017/2024, Madiany Magistrates Court Criminal Case No.E134/2024 and E135/2024 to testify in camera or closed session using a witness protection box.
- b. Any identifying information of the protected witness in Siaya High Court Criminal Case No E017/2024, Madiany Magistrates Court Criminal Case No.E134/2024 and E135/2024 shall be redacted from the witnesses’ statements and materials to be supplied to the accused persons.
- c. The protected witness in Siaya High Court Criminal Case No E017/2024, Madiany Magistrates Court Criminal Case No.E134/2024 and E135/2024 shall use pseudonyms while testifying and during other court appearances before the respective courts.
- d. The protected witnesses’ identities in Siaya High Court Criminal Case No E017/2024, Madiany Magistrates Court Criminal Case No. E134/2024 and E135/2024 shall be concealed by use of voice distortion while giving evidence.
- e. The protected witness in HCCR E017/2024 before Siaya High Court, CR. E135/2024 and CR. E134/2024 before Madiany Law Courts shall give testimony through a special camera concealed video (virtual) link specifically generated for the particular hearing of the protected witness.
- f. These orders shall be filed in Siaya High Court Criminal Case No. E017/2024, Madiany Magistrates Court Criminal Case No.E134/2024 and E135/2024.
- g. The Deputy Registrar, Siaya High Court, is hereby directed to notify the respective Magistrates and Judge hearing the subject matters of the nature and effect of the orders herein.
- h. The miscellaneous application file germane shall be kept under key and lock.

19. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11TH DAY OF SEPTEMBER, 2024.

A. C. BETT

JUDGE

