



**Republic v Wawire & 2 others (Criminal Case 38 of 2018)
[2023] KEHC 2760 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 38 OF 2018
WM MUSYOKA, J
MARCH 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

OMUKANDI BEN WAWIRE 1ST ACCUSED

JORAM BARAZA 2ND ACCUSED

ANTHONY WAFULA MUKAMBI 3RD ACCUSED

RULING

1. I have gone through the record herein, and I also had the benefit of hearing and seeing all the witnesses testify herein.
2. Am persuaded that the Republic has established a prima facie case against the 1st and 2nd accused persons, and I hereby put them on their defence, as they were both placed at the scene by PW1, PW2 and PW3.
3. I, however, find that no case has been established against the 3rd accused, to warrant his being put on his defence, for the eyewitnesses, PW1, PW2 and PW3, although they knew him, did not place him in the scene. His name came from the investigating officer, PW5, based on information gotten from the 1st and 2nd accused persons, during interrogation. They allegedly mentioned the 3rd accused.
4. The legal burden of proof always lies with the prosecution, and at this stage of the proceedings, no evidence has been adduced against the 3rd accused. Whatever the 1st and 2nd accused may say in their defence against their co-accused, the 3rd accused, would amount to mere accomplice evidence, whose weight is almost nil, unless corroborated. Corroboration can only be found in other evidence. There is no other evidence against the 3rd accused so far.



5. Consequently, I shall find that the 3rd accused person has no case to answer, I shall accordingly discharge and acquit him, as I hereby do. Should he be in custody, he shall be released forthwith, unless he is otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF MARCH 2023

W.M. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Ms. Mahuni, Advocate for the accused person.

