



**Republic v Yoma & 11 others (Criminal Case E074 of 2022)
[2024] KEHC 11818 (KLR) (Crim) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E074 OF 2022
LN MUTENDE, J
OCTOBER 3, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

**TITUS YOMA 1ST ACCUSED
TUTUS MUTUNE 2ND ACCUSED
JOHN CHENGO MASHA 3RD ACCUSED
LINAH KOGEY 4TH ACCUSED
BENJAMIN KIPKOSKEI KOIMA 5TH ACCUSED
BENJAMIN LOREMA 6TH ACCUSED
VOLKER EDAMBO 7TH ACCUSED
CYPRINE ROBI WANKIO 8TH ACCUSED
JOSPHAT SENSIRA 9TH ACCUSED
MOHAMED ALI GUYO 10TH ACCUSED
MOHAMMED BAA 11TH ACCUSED
JAMES RONO 12TH ACCUSED**

RULING

1. This is a matter where the Director of Public Prosecutions (DPP) intent on prosecuting the suspects herein filed information in that respect on 26th October, 2022.



2. Prior to reading the information to the suspects, various applications were made, heard and determined. In the Ruling dated 26th day of July, 2024 Kimondo J. directed suspects to take plea on a date that they would appear before this court.
3. Upon appearance as directed, before the substance of the information was stated to the suspects, the DPP made an application seeking deferment of plea taking to a later date on grounds that one of the suspects is yet to be apprehended. That a warrant of arrest was issued against him but the Inspector General of Police has failed to effect arrest. It was further urged that considering the serious crimes committed it would be imperative for all persons indicted to be tried jointly.
4. I have considered the application and various arguments in response. The suspects are not opposed to the plea taking being deferred as some of them have filed applications at the Constitutional and Human Rights Division and the Court of Appeal that are alleged to be pending directions. It is however notable that there are no orders from the stated courts that would affect plea-taking in the instant matter.
5. The DPP's application is vehemently opposed by Counsel representing victims. The substratum of their argument is that the matter should proceed without undue delay. That the 11th suspect, Mohammed Baa, who is still at large can be arrested at a later time and arraigned and there will be no prejudice suffered as charges will be read to him whereby the DPP will make opening remarks.
6. That the charges can be framed to indicate that those before court are charged with others not before court. They called upon the court to consider the rights of victims who hope that justice will be met. The victims are of the view that no cogent reason has been given by the DPP to have the plea deferred hence the DPP is acting in abuse of the powers provided by Article 157 (11) of the Constitution.
7. In a rejoinder the DPP argues that public interest covers the rights of the accused and the victim. That Article 50(3) (4) of the Constitution requires that the accused person be present during trial. That deferment of the plea will not be trampling on the rights of the the victims since the information filed was deferred so that parties applications could be fully determined.
8. The DPP is in opposition of filing the information separately as suggested and also having the victims and accused persons evidence taken separately as it was not suggested by Kimondo J.
9. Article 157 of the Constitution read with Section 6 of the Office of the Director of Public Prosecutions (ODPP) Act establishes the office of DPP and its functions. Of relevance to the argument herein is that the DPP exercises prosecutorial powers at all stages of the trial and such powers are not subject to supervision, control or influence.
10. Section 9 of the Victim Protection Act as read with Article 27 of the Constitution also provides for victim participation in proceedings to ensure fairness. The victim participation, though allowed, is limited as spelt out under the Act. They are to be supervised and the court should ensure that there is no interference with the prosecution discretion as provided under Section 20 (1)(a) (2) of the Victim Protection Act.
11. In this regard the victims proposal and /or suggestion is that charges proceed and that the 11th suspect be charged separately through different information. The power and decision to charge and all directions taken is the province of the DPP who retains the discretion throughout the proceedings. In Joseph Lendrix Waswa v R [2020] eKLR the Supreme Court held that the victim has no role in the decision to prosecute and that the DPP must retain control of and supervision over the prosecution of the case.



12. Secondly, the victims have not demonstrated that the application and the decision to arraign the 11th suspect together with the rest is an abuse of the court process and against public interest. The victims' interest and rights are represented by the Prosecution and there can be no prejudice unless it is clearly demonstrated that the directions taken are in breach of its public duty or unconstitutional.
13. Thirdly, the rights of the accused person in criminal trial are also at stake and ought to be protected. The 11th suspect has been accused, he should be arraigned so as to answer the allegations against him.
14. The DPP has given a plausible explanation of steps taken to have the 11th suspect apprehended so as to be presented before the court. The Inspector General of Police who is mandated to cause arrest of individuals to be investigated and indicted should act as directed by the court.
15. Considering the age of the matter, the interest of victims, the application by the DPP be and is hereby allowed. In the result, plea taking is deferred to 5th November 2024; and, the Inspector General of Police is directed to execute the warrant as ordered by Kimondo J.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI**

THIS 3RD DAY OF OCTOBER, 2024.

L. N. MUTENDE

JUDGE

