



**Republic v Mutunga (Criminal Case E002 of 2020)  
[2024] KEHC 13985 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13985 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE E002 OF 2020  
FR OLEL, J  
NOVEMBER 11, 2024**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**MORIS MWANIA MUTUNGA ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal code* (Cap 63) laws of Kenya. After the fifth (5) prosecution witness had testified, the prosecution counsel made an oral application to amend the Information to add the words “another person not before court” and also to include an Alias name of the accused “Kimani”.
2. The respondent/accused through his counsel opposed this oral application because he would be prejudiced, and the sole aim of the prosecution was to seal loopholes already exposed in the prosecution case. Before filing the information, the prosecution had ample time to consider their case and know the obtaining facts, which they should not be allowed to change midstream.
3. The power to amend information/charge sheet is donated to the trial court by Section 214(1) of the *Criminal Procedure Code*. The Court’s power is at all times to be exercised judicially but not capriciously. The court is enjoined to consider the circumstances of the case and the interest of justice. The jurisdiction is unfettered the only condition being that should the charge be amended the court shall call upon the accused person to plead to the amended charge - (Section 214 (1) (i) of the *Criminal Procedure Code*) and also to have the witnesses recalled to testify afresh or to be cross examined. (Section 214 (1) (ii) of the Criminal Procedure Code).
4. The prosecution case is yet to be closed and the amendments sought to be effected on the “information” are Minor. The accused person will not be prejudiced if the same is allowed as the law provides that he



may recall any witness to testify afresh and or to be recalled for cross-examined. His rights to fair trial as enshrined under Article 50(2) of the *Constitution* 2010 are well protected.

5. I find that this application to amend the “Information” is merited and the same is allowed.
6. The prosecution will file an amended charge sheet to enable the accused herein to take the new plea, and further if need be as shall be intimated by the accused counsel, they shall be at liberty to recall any witness to testify afresh and/or to be further crossed examined.
7. It is hereby so ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 11<sup>TH</sup> DAY OF NOVEMBER 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**Delivered on the virtual platform, Team this 11<sup>th</sup> day of November 2024.**

In the presence of: -

Accused present in court

Mr. Mangare/Ms Otulo for Prosecution

Susan/Sam Court Assistant

