



**Republic v Ongomo & 2 others (Criminal Case E025 of 2023)  
[2024] KEHC 13727 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13727 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E025 OF 2023  
AC BETT, J  
NOVEMBER 7, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DENNIS MWIMARI ONGOMO ..... 1<sup>ST</sup> ACCUSED**

**FRANKLINE MANYE WEPO ..... 2<sup>ND</sup> ACCUSED**

**JOHN EKUTU OKWARO ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The Accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), Cap 63, Laws of Kenya. The brief particulars are that on 13<sup>th</sup> June 2023, at Esukuru village, East Wanga Sub-location within Kakamega County, with others not before the court, they murdered Fredrick Kombo Atira. After two (2) witnesses had testified, PW2 was arrested and charged in a separate file, with the same offence.
2. The prosecution has now applied to consolidate the two files on the ground that when PW1 testified, she identified Simon Bosire who testified later as PW2, as amongst the persons who had assaulted the deceased shortly before his death. Ms. Chala for the prosecution stated that at the time the decision was made to charge the three (3) Accused persons, it was not possible to know that PW2 was among the suspects. According to the prosecution, the decision to charge is the prerogative of the prosecution under Article 157 of the [Constitution](#) and the prerogative cannot be controlled by anybody.
3. Ms. Nafuye for the Accused persons opposed the application. She submitted that while the prosecution enjoys the protection of the [Constitution](#), the intended consolidation will prejudice the Accused persons as PW2 gave evidence on oath in which he identified the Accused persons as the ones who assaulted the deceased. Ms. Nafuye further submitted that starting the trial afresh



would inconvenience the Accused and undermine the rights of the Accused under Article 50 of the Constitution.

4. Section 135 (1) of the Criminal Procedure Code provided for consolidation of files and states as follows:-

“Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.”

5. Consolidation in general is defined as the action or process of combining a number of things into a single more effective coherent whole. Consolidation of criminal matters refers to the joining or combination of two or more cases together into one trial. Consolidation ensures efficiency and fairness and facilitates the expeditious disposal of cases.
6. The ground upon which two or more matters can be consolidated include the overlap of issues, the same identify of parties, the convenience of the parties, and marriage of facts. Therefore, where several cases involving different accused persons charged on different occasions over the same offence emerge, it is necessary for purposes of quicker disposal of the cases to be consolidated since the witnesses are the same.
7. The stage of the trial at which consolidation can be done depends on the circumstances of the case. The court must consider the interests of justice, including fairness to all parties and the efficient use of resources in making a decision on consolidation.
8. In the case of *Republic -vs- Koech Keiyo & 8 others* [2015] eKLR, the Court stated:-

“Consolidation of criminal cases at an early stage is desirable in the interest of justice and efficiency.”

From the aforesaid case, it is evident that consolidation should be done at an early stage of the case. Therefore, although the consolidation of criminal matters can be allowed at any stage of the trial, it is more desirable for the consolidation to be done at the initial stages of the case.

9. In this case, the prosecution’s case was at the initial stages. Two witnesses had testified. One of those who testified is Simon Bosire Murunga who was later charged with the same offence vide Kakamega HCCR. Case No. E020 of 2024 and whose matter is sought to be consolidated with this case. In the circumstances, only one witness is deemed to have testified. The case is therefore at the initial stages as more witnesses are yet to testify. In the case of *Republic -vs- Gitau* [2013] eKLR, the Court held as follows:-

“The power to consolidate criminal charges lies in the discretion of the court and can be exercised at any stage of the proceedings, subject to the overriding consideration of the interests of justice.”

10. I have carefully considered the application while bearing in mind the interests of the Accused persons. The Accused persons herein and the Accused person in Criminal Case No. E020 of 2024 are charged with the offence of murder relating to the same victim. There shall be common witnesses testifying on behalf of the State because the charges arise from the same facts. No prejudice will be suffered by the Accused persons since the case was at the initial stages of hearing and can be heard de novo. In regard to the fears expressed by the Accused, the same can be addressed during the hearing. In addition, the consolidation of the charges will save the Republic resources in terms of time and money spent in



pursuit of justice. Further, the court's judicial time will also be saved. In *Law Society of Kenya -vs- The Centre for Human Rights and Democracy & others* [2013] eKLR, the Supreme Court held thus:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”

11. For the above reasons, this court grants the prosecution's application to consolidate Criminal Case No. E025 of 2023 and E020 of 2024. The charges shall be consolidated in Criminal Case No. E025 of 2023. The Accused persons shall take a fresh plea to the proposed consolidated charge sheet.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**A. C. BETT**

**JUDGE**

**In the presence of:**

Ms. Chala for the Prosecution

No appearance for Ms. Nafuye for the Accused

Accused persons present

Court Assistant: Polycap

