



**Republic v Yoma & 11 others (Criminal Case E074 of 2022)
[2024] KEHC 13699 (KLR) (Crim) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E074 OF 2022**

**LN MUTENDE, J
NOVEMBER 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

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

RULING

1. This matter came up today for plea taking and further orders following the ruling dated 3rd October 2024.



2. Prior to the information being read to the suspects, it turned out that the 4th suspect; and, the 11th suspect who was supposed to be apprehended following a warrant of arrest issued were absent. The 4th suspect Counsel sought an adjournment and deferment of the plea on grounds that the suspect who is diabetic and hypertensive had been taken ill when proceedings were ongoing. Counsel undertook to avail medical records. The basis of the application for adjournment was to enable the suspect participate in the proceedings.
3. The application was not opposed by the Office of the Director of Prosecutions (ODPP) who on their part sought deferment of the plea since the 11th suspect had not been arrested and arraigned by the Inspector General of Police (IG) as directed by the court yet his presence is imperative as the role played by the suspects is intertwined. That the ODPP is unable to proceed with the charges in a suggested manner. They sought for a further date when an officer duly authorized to effect arrest could appear to render an explanation as to the whereabouts of the suspect.
4. The suspects do not contest the application. They support the argument that the case does not concern individual liability, but, criminal superior responsibility/command responsibility.
5. The victims oppose the application on grounds that the court should balance the interest of the victims and the independence of the ODPP. That the victims have a right to have the trial begin and conclude expeditiously. It is urged that the matter proceeds with the suspects present today, since there is a possibility of not all suspects attending court on the same day. They dismissed the application as a delaying tactic.
6. Further, it was urged that the whereabouts of the 11th suspect are known and in the public domain hence the Inspector General of Police should use the machinery at his disposal to arrest and arraign him.
7. I have duly considered the competing submissions. Article 157 as read with Article 50 of the Constitution; and, Section 4 of the ODPP Act refer to enabling the ODPP to discharge its mandate in presenting criminal trials. Article 50 of the Constitution is in respect of the rights of an accused person who has been arraigned.
8. It is a fundamental right and part of the Constitution edits that a suspect/accused should be arraigned and charged before court within reasonable time. the Constitution does not speculate in charging and commencing trial.
9. The accused right to fair trial includes being present in court and to be tried by a court with jurisdiction unless his conduct makes it impossible for the trial to proceed. All these would require that the trial commences so that rights under Article 50 be realized.
10. The victims' rights also mirror the public rights and are listed under the Victim Protection Act. As stated in the Ruling of this court delivered on 3/10/2024, the ODPP should protect and facilitate the victims' rights. Taking these into consideration, this court may view continued deferment of plea as an infringement of the Constitution.
11. The Inspector General of Police has not acted to effect arrest on the 11th suspect despite the court directions and existence of valid warrants of arrest which have been extended severally so as to avoid deferment of plea taking. The inaction of the Inspector General of Police and DPP on the issue may prove contrary to public interest as reflected by representations of counsel for the victims, Law Society of Kenya and the Kenya National Commission on Human Rights.
12. On whether the DPP should be prevented from proceeding today, it is their position, and, rightly so that it retains the authority over Criminal Prosecution as provided. What would be important is to



commence trial considering that this is a matter of great importance where victims have been waiting for justice for long.

13. However, it is notable that the case which is weighty in nature concerns superior liability and the accused role in the whole chain of events is a matter for trial. This would require the DPP taking appropriate steps.
14. In that regard, the 4th suspect whose application is unopposed should be present when the co-suspects take plea, and, the IG should make necessary efforts to effect arrest upon the 11th suspect.
15. In result, I grant orders thus:
 1. Plea-taking is deferred to 15/1/2025; to be taken in open/ physical court.
 2. The Inspector General of Police or a duly authorized officer shall appear in court to explain why the 11th suspect cannot be arrested.
 3. Warrant of arrest issued for the 11th suspect to subsist.
 4. The 4th suspect to avail medical records to prove the fact of indisposition.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 5TH DAY OF NOVEMBER, 2024.**

L. N. MUTENDE

JUDGE

