



In re Application for Orders for Witness Protection (Miscellaneous Application 12 of 2020) [2020] KEHC 5285 (KLR) (15 May 2020) (Ruling)

In re Matter of Application for Orders for Witness Protection [2020] eKLR

Neutral citation: [2020] KEHC 5285 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITUI

MISCELLANEOUS APPLICATION 12 OF 2020

LN MUTENDE, J

MAY 15, 2020

N THE MATTER OF ARTICLE 50 OF THE CONSTITUTION

IN THE MATTER OF THE WITNESS PROTECTION ACT

IN THE MATTER OF THE WITNESS PROTECTION RULES, 2015

AND

IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION

IN THE MATTER OF

REPUBLIC APPLICANT

RULING

1. The applicant approached this court by way of chamber summons, *ex-parte*, seeking orders pursuant to article 50 of the Constitution, rule 3(1)(2) of the High Court (Practice and Procedure) Rules, section 4(3) (a)(b)(c) and section 16 of the Witness Protection Act, and Regulation 5(6) of the Witness Protection Regulations, 2011, rule 4, 5 and 9 of the Witness Protection Rules, 2015, seeking orders as follows:
 - a. That this honourable court be pleased to grant witness protection orders for the protected witnesses in High Court Criminal Cases No 3/2020, 4/2020 and 6/2020 at the High Court in Kitui to testify in camera or closed session.
 - b. That this honourable court be pleased to grant witness protection orders for any identifying information to be redacted from the witness' statements and materials in the above stated cases before being supplied to the accused persons.
 - c. That this honourable court be pleased to grant witness protection orders for the said protected witnesses to testify using pseudonyms.



- d. That this honourable court be pleased to grant witness protection orders for the protected witnesses' identity to be concealed while giving evidence.
 - e. That the miscellaneous application file germane to this application be kept under lock and key.
 - f. That this honourable court be pleased to grant any such orders it deems fit in the circumstances.
2. The application is premised on grounds that: The applicant had under its protection vulnerable witnesses in High Court Criminal Case No 3/2020; 4/2020; and 6/2020, at Kitui; the crucial witnesses' lives are in danger because of evidence they have agreed to give in support of the matter and the stated witnesses are in the process of being admitted into the witness protection programme as per the requirement of section 7 of the Witness Protection Act.
 3. Further, that, unless protection orders are granted, there is a high risk of the witnesses being threatened, intimidated and/or harmed, therefore, it is in the public interest and justice that protection orders be issued to protect the witnesses and to facilitate their testimony.
 4. The application is supported by an affidavit deposed by Carlos Ekuton, a senior protection officer at the Witness Protection Agency (WPA) who deposes that the agency received referrals for protection and following the risk assessment conducted they established that the protected persons who are minors who had agreed to testify were in the process of being admitted into the witness protection programme under the WPA.
 5. That persons accused are charged in Criminal Cases No 3/2020, 4/2020 and 6/2020 with the offence of murder at Kitui High Court. These individuals have sympathizers in the local community that have demonstrated hostility towards the minors through the act of mob justice against their deceased mother.
 6. That the witnesses (minors) have crucial information concerning events that happened prior and during the act of murder therefore their lives are in danger; and this therefore calls for provision of witness protection.
 7. I have considered the application; affidavit evidence and annexures thereto. The basis upon which the witnesses should be included in the witness protection programme are well laid down. An understanding was reached between the participants and the Director, WPA. It has been established that the participants will be witnesses in criminal proceedings as they have already recorded statements. The police have expressed their inability to guarantee their safety in the course of proceedings. Their relationship with the alleged victim in the criminal proceedings, has been set out. It is therefore apparent that their lives may be in danger. In the result, the application is meritorious. Therefore, I grant orders as follows:
 - (i) A witness protection order be and is hereby issued for the protected witness in High Court Criminal Case No 3/2020, 4/2020 and 6/2020 to testify in camera or closed session.
 - (ii) Any identifying information shall be redacted from the witnesses' statements and materials to be supplied to the accused persons.
 - (iii) The protected witnesses shall testify using pseudonyms.
 - (iv) The protected witnesses' identity shall be concealed while giving evidence.
 - (v) The miscellaneous application file germane shall be kept under key and lock.



8. it is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 15TH DAY OF MAY, 2020.

L. N. MUTENDE

JUDGE

