



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**MISC. CASE NO.30 OF 2014**  
**IN THE MATTER OF ARTICLE 50 OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF OF THE WITNESS PROTECTION ACT**  
**AND**  
**IN THE MATTER OF THE JUDICATURE ACT**  
**AND**  
**IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION**  
**REPUBLIC.....APPLICANT**

**RULING**

1. The Chamber Summons Application before me is dated 9th July 2014 and is premised on **Article 50** of the **Constitution**, **Section 4(3) (a) (b) (c)** and **Section 16** of the **Witness Protection Act (Chapter 79 Laws of Kenya)** and **Section 19** and **Rule 3(2)** of the **Judicature Act**. The Application has been made by the Director of Public Prosecution (DPP) and seeks the following orders;

- “(1) That the Court be pleased to certify this Application as urgent and be heard exparte at the first instance.*
- (2) That the Court be pleased to grant witness protection orders for the witnesses to testify in camera or closed session.*
- (3) That witness statements be redacted before being given to the accused persons.*
- (4) That the witnesses use pseudonyms during testimony.*
- (5) That the Court be pleased to grant any such orders it deems fit in the circumstances.”*

2. The Application is supported by the Affidavit of Robert Karani, a Protection Officer attached to the Witness Protection Agency (WPA) sworn on 9th July 2014 and is based on the following grounds;

**“(1) That the Applicants are witnesses in Thika Criminal Case No.205/50/2013.C.F No.5755/2013.**

**(2) That the life of the Applicants may be endangered as a result of their evidence.**

**(3) The Memorandum of Understanding under Section 7 of the Witness Protection Act has been entered between the witnesses and the Witness Protection Agency.**

**(4) It is in the interest of justice and the public that protection orders be issued to protect the witnesses.”**

3. In his Affidavit, Robert Karani states that the Applicants are witnesses in Thika Criminal Case No.205/50/2013, C.F. No5755/2013 (hereinafter Thika Criminal Case) where the Accused person was charged with the offence of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. That case is scheduled for hearing on 17th July 2014 and Karani claims that the life of the Applicants may be endangered as a result of their testifying. He stated that he had conducted a risk assessment on all the witnesses and he established that the Accused persons in the Thika Criminal Case are members of a very dangerous gang operating within Thika and further that the Accused persons and their accomplices have threatened to kill or harm any person known to testify in Court against the Accused persons. He added that in fact they have recently murdered the complainant in the Criminal Case and he has thus concluded that the threats by the said group are real and they are in need of witness protection. And finally that, they have indeed signed the Witness Memorandum of Understanding under **Section 7** of the **Witness Protection Act**.
4. The DPP has also sought for orders that the witnesses do testify in camera or closed session and in that regard the **Constitution at Article 50(2)(d)** provides for the right to a fair trial which includes;

**“Right to a public trial before a Court established under this Constitution”**

Witness protection is however provided for, under **Section 16** of the **Witness Protection Act** which states as follows;

**“(a) The person named in the Application as a witness;**

**(i) was a witness to or has knowledge of an offence and is or has been a witness in criminal proceedings relating to the offence or**

**(ii) is a person who because of his relationship to or association with a person to whom sub paragraph (i) applies may require protection or other assistance under this Act.**

**(b) The life or safety of the person may be endangered as a result of his being a witness.**

**(c) A memorandum of understanding has been entered into by the witness in accordance with Section 7 of the Act, and;**

**(d) The person is likely to comply with the Memorandum of understanding.”**

From the evidence placed before me, it is clear that the lives of the witnesses are in danger by virtue of being witnesses in the Thika Criminal Case. The need to protect the lives of the witnesses is important as much as is the right of the Accused persons to a public trial. In the circumstances of this case, I do not see any prejudice that the Accused person may suffer by holding the trial in camera or in closed sessions for the sake of protecting the witnesses.

5. The Applicants also seek for orders that the witness statements be redacted before being given to the Accused persons and that the witnesses should use pseudonyms during testimony. **Article 50(2)(j)** provides for the right;

***“To be informed in advance of the evidence the prosecution intends to rely on and to leave reasonable access to that evidence.”***

6. The redacting of Witness Statements to exclude the witnesses' personal details such as the name, address and other personal particulars does not in my view amount to a contravention of the provisions of **Article 50(2)(j)**. The Accused persons will have the substance of the evidence to be adduced at the trial which is the tenet of protection accorded by this provision.
7. As to the use of pseudonyms during the trial, I am also satisfied that it does not in any way, violate the provisions of **Article 50** of the **Constitution**.
8. Having addressed my mind as above, it therefore follows that the Application has merit and is granted as prayed.
9. The following are the final orders;

*(a) The witnesses in Thika Criminal Case No.205/50/2013, C.F No.5755/2013 namely; Joseph Kagwima Kungu, Samuel Mwangi Kinya, and Ephantus Kamande Muiruri do testify in camera or closed session.*

*(b) The Witness Statements in Thika Criminal Case No.205/50/2013, C.F No.5755/2013 be redacted before being given to the Accused persons.*

*(c) The witnesses named above should use pseudonyms to be decided upon by the DPP during testimony.*

*(d) This file to be kept under lock and key by the Deputy Registrar of this Division.*

10.Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 16TH DAY OF JULY, 2014**

**ISAAC LENAOLA**

**JUDGE**

**In the presence of:**

Irene – Court clerk

Miss Nyamwaya for Applicant

**Order**

Ruling duly read.

**ISAAC LENAOLA**

**JUDGE**