



Republic v Kirisa & another (Criminal Case E007 & E016 of 2025 (Consolidated)) [2025] KEHC 15425 (KLR) (Crim) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E007 & E016 OF 2025 (CONSOLIDATED)
AM MUTETI, J
OCTOBER 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CECILIA WANGARI KIRISA 1ST ACCUSED

ALLAN TEMBA GACHERU 2ND ACCUSED

RULING

1. The two accused persons are charged with the offence of murder C/S section 203 as read with 204 of the Penal Code.
2. The state applied for consolidation of Makadara Criminal Case No. E016 of 2025 with Milimani High Court Cr E007 of 2025 under file No. 007 of 2025 which shall henceforth be the lead file.
3. The prosecution presented a consolidated Murder information with Cecilia Wangari Kivisa as the 1st accused and Allan Temba Gacheru as the 2nd Accused.
4. Immediately after the consolidation, the state moved the court to review the bail terms granted to the first accused to include a requirement that she deposits her passport in court pending trial.
5. The state also, teaming up with counsel for the accused, sought guidance from the court on the extent of participation by victims in the case.
6. The prosecution and the defense submitted that the victim’s participation should not be allowed to mutate into a secondary prosecutor and that they should be accordingly guided to avoid encroaching on the mandate of the prosecution as spelt out under Article 157 of *the Constitution*.



7. The request to have the first accused deposit her passport though initially highly contested was not hotly contested at the hearing.
8. The court in granting bail under Article 49 (1) (h) of *the Constitution* and Section 123A of the Criminal Procedure Code has the discretion to impose terms and conditions to be met by the accused persons so as to ensure that the interests of justice are not compromised by the non -attendance of the accused.
9. The demand by the prosecution to have the 1st accused deposit her passport in court is not unique to this case. The practice of depositing of travel documents in court by an accused person is a matter that has gained notoriety in our criminal justice system where persons who hold passports are on trial.
10. It is just one of those measures that a court takes out of abundance of caution to ensure that accused persons remain within the jurisdiction of the court even though, that may by itself, not be a guarantee that they would not abscond.
11. The court is therefore minded to impose that condition upon the 1st accused but since under Article 12 (1) (b) of *the Constitution* the 1st accused is entitled to the passport, this court will order that it be deposited in court and that the 1st accused shall be at liberty to apply for its release whenever she intends to travel out of jurisdiction.
12. The prayer for its release whenever required shall be considered by the court as appropriate.
13. *The Constitution* under Article 12 (2) envisages that in some instances a passport may be denied, suspended or confiscated. The order by this court does not in any way amount to denial of the right, suspension or confiscation. It is simply a measure aimed at securing the presence of the 1st accused within the jurisdiction hence the rider on its release whenever necessary.
14. The prosecution have also requested that the 1st accused provides details of her permanent address and her telephone contacts.
15. In this court's view those are basic and routine requirements of any accused person to disclose and the court has no difficulty ordering that the 1st accused provides details of her permanent address and telephone contacts to the Deputy Registrar of this court forthwith.
16. As for the 2nd accused the court also directs that he complies with the conditions for deposit of a passport, provision of details of permanent address and telephone contacts for uniformity.
17. The orders are meant to ensure that there is equity to all and that there is no preferential treatment or any form of discrimination in terms of article 27 of *the Constitution*.
18. On the issue of victim participation counsel for the victims indicated unequivocally that he did not in any way intend to take over the role of the prosecutor.
19. All parties agreed that the participation of victims be limited to them sharing their concerns during the trial and in appropriate circumstances they be permitted to seek any clarification from witnesses that align with the case without interfering with the prosecution strategy adopted by the DPP.
20. It is now an undeniable fact that the place of victims in our criminal justice system is settled.
21. Victims of crime are no longer passive participants in a criminal case.
22. The Victims Protection Act under Section 9 (2) (a) and (b) provides:
Rights during the trial process
(1) A victim has a right to—



- (a) be present at their trial either in person or through a representative of their choice;
 - (b) have the trial begin and conclude without unreasonable delay;
 - (c) give their views in any plea bargaining;
 - (d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;
 - (e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;
 - (f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and
 - (g) be informed of the charge which the offender is facing in sufficient details.
- (2) Where the personal interests of a victim have been affected, the Court shall—
- (a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and
 - (b) ensure that the victim's views and concerns are presented in a manner which is not—
 - (i) prejudicial to the rights of the accused; or
 - (ii) inconsistent with a fair and impartial trial.
- (3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.
23. The section properly settles the irreducible minimums in terms of victim participation in a trial.
24. The views of the victims may be directly communicated to the court by the victim or his counsel. The right to do so is constitutionally underpinned in Article 50(7) of *the constitution*.
25. The court during the trial shall permit the participation in the following regard:
- a. To raise any concerns about the testimony of a witness with the court during examination in chief but the victims counsel shall not do so before consulting with the prosecutor on the issue. This will ensure that those issues that the victims believe have not been adequately covered can be covered during examination in chief.
 - b. For the avoidance of doubt the victims counsel will be at liberty to directly address the court whenever an agreement cannot be reached between them and the prosecutor regarding any concern that the victims strongly believe to have a bearing on the case.
 - c. The victims shall have the right to make submissions on any matter of law that may become the subject of determination in the course of the trial.
 - d. After cross examination the victim or his counsel shall confer with the prosecutor on the issues to address in re-examination if any and in the event of disagreement the victims counsel shall be at liberty to address the court directly for appropriate intervention and guidance.
 - e. The victims shall at the stage of submissions share a copy of their submissions with the prosecution counsel who shall incorporate them in their submissions before filing.



- f. The afore stated guidelines are by no means exhaustive and the court shall retain the ultimate discretion to entertain the victim's concerns as and when raised but that should not in any way encourage frivolity in victim's intervention.
26. Finally, the court encourages all counsel in the matter to familiarize themselves with Supreme Court guidelines as spelt out in Joseph Lendrix Waswa Vs. Republic (Petition No. 23 of 2019) [2020] KESC 23 (KLR) 4th September 2020 on victim participation.
27. The passport of the 1st accused is to be deposited with the court before close of business today.
28. It is so ordered.

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 30TH day of OCTOBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Habiba: Court Assistant

Ms Njoroge for the state

Wainaina h/b Wandugi for the 1st Accused

Ms Wangui Riungu for 2nd Accused

Ms Amonya h/b Lubaeto for victim

Accused : 1st & 2nd Present

