



**Republic v Muasya (Criminal Case E010 of 2020)
[2026] KEHC 2027 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E010 OF 2020
RC RUTTO, J
FEBRUARY 17, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON MUE MUASYA ACCUSED

RULING

1. When this matter came up for hearing today, the prosecution sought an adjournment on the ground that it had no witness. From their submissions, only one witness remains, that is, PC John Koech, the original Investigating Officer (IO). When this matter last came up for hearing on 25th November 2025, this Court gave a last adjournment and fixed the matter for hearing today, 17th February 2026.
2. The prosecution counsel informed Court of the numerous attempts to get the investigating officers to procure the witnesses. He made reference to calls made to the SCCIO, the IO, as well as a letter dated 19th November 2025 addressed to the Sub County Criminal Investigating Officer, DCI Athi River Sub-County notifying them of today’s hearing date. Notably, the letter emphasized that the officer ensures all remaining witnesses are promptly bonded to attend court on the hearing date and that this was the last adjournment to the State.
3. The prosecuting counsel expressed his frustration and invited the current investigating officer to address the Court on the difficulties experienced. The investigating officer gave his evidence on oath. He stated that he was No. 99906, PC Reuben Kamau an investigator at DCI Kyumbi. That he took over the file from PC Uda Agagwa on 16th June 2025 after he developed mental issues. That the file was investigated by Cpl Koech who retired in 2023. That retired Cpl Koech had been summoned and served by PC Uda and that he had gotten in touch with him through the phone but he declined to come to Court. PC Kamau confirmed to the Court that he did not serve retired Cpl Koech with summons for today’s hearing date. He requested the Court to allow recalling PW5, who was the assisting IO to come and testify and produce the exhibits.



4. After the IO had given his statement, the prosecution counsel further expressed his frustration in this matter stating that that was not what was expected of an officer who forms part of a critical stakeholder in the criminal justice system. He made reference to the rights of both the victims and the accused person and urged the Court to balance the rights, grant the adjournment since the evidence being procured was crucial information linking the accused to the crime.
5. The accused counsel opposed this application. He stated that the issue of witnesses started on the 14th July 2022. He gave the sequence as follows; on 12th February 2024; on 4th July 2024 witnesses did not attend court. Further, on 3rd October 2024, the witnesses were not present and warrants of arrest were issued to Cpl John Koech to be effected by the DCI Kyumbi Police Station to assist the prosecution avail the witnesses. The accused counsel further stated that the position of the warrants was not stated and emphasized that the accused has been in custody for a period of six years. They urged the Court to decline the adjournment.
6. It is worth noting that the accused has been in custody since 9th November 2020.
7. I have perused the record of proceedings so far and I note that 5 witnesses have testified. From the prosecution's indication, only 1 witness remains. The last witness, PW5, PC Alex Muinde the assisting IO, testified on 25th April 2024. Upon his testimony, the matter has been adjourned four other times to enable the prosecution to avail the one remaining witnesses. The six times are 17th June 2024; 4th July 2024; 3rd October 2024; 27th January 2025; 14th May 2025 and 21st October 2025.
8. Notably on 14th May 2025 the Court issued summons to the SCCIO Kyumbi Police station to summon the witnesses. On 21st October 2025 the prosecution was not ready due to unavailability of the witness. It was rescheduled to today 17th February 2026 and the Court marked it as a last adjournment.
9. Today, the prosecution still has not availed its witness and now seeks to have the matter adjourned. The IO, who also seek that the Court grants them an order recalling the assisting IO (PW5) to come and testify and produce the exhibit, has not demonstrated any effort made to comply with the summons issued by the Court to ensure that the witnesses are availed before Court.
10. I have thoroughly perused the record. In exercising the discretion to either grant or decline an application for adjournment, the Court must balance both the rights of the victim and that of the accused person. In this matter, the accused has been in custody since 2020. It is his constitutional right under Article 50(2)(e) of *the Constitution* to have the case against him heard and determined without undue delay. On the other hand, the prosecution has the right to be granted time to call all the witnesses it wants to prove its case.
11. Since 25th April 2024 when the last prosecution witness testified, the prosecution has heard close to 2 years to call its last ONE witness. As outlined above, the matter has been severally adjourned to enable the prosecution to call that witness to no avail. The Court intervened by issuing summons and granting arrest warrants. The counsel/prosecutors also notified the investigating officer to avail the witnesses but it appears the investigating officers are unwilling to cooperate and/or comply with the court's order. Notably, the intended witness is a retired police officer whom it is expected that the prosecution and the investigating agency know his aboard. It is now alleged that summons could not be served as the witness has blocked the investigation officer's number. But why seek to serve summons when you have warrants of arrest? The least said on this aspect the better. I find that the prosecution has been over indulged.



12. Upon weighing the competing interests of the accused on one hand and the prosecution and victim on the other hand, I find that the scales of justice tilts towards dismissing the application for an adjournment, which I hereby do. The application for an adjournment is declined.
13. As I decline to grant the adjournment, I direct that this ruling be served upon the SCCIO Athi River for his information. I further issue summons to issue upon the SCCIO Athi River Subcounty as a critical stakeholder in the justice system to appear to court for an engagement on measures taken to avert any such occurrence in the future.
14. Orders accordingly.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 17TH DAY OF FEBRUARY 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....Accused

.....ODPP

Selina Court Assistant

