



**Maweu v Republic (Miscellaneous Criminal Application  
E127 of 2025) [2026] KEHC 3474 (KLR) (17 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3474 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKADARA  
MISCELLANEOUS CRIMINAL APPLICATION E127 OF 2025**

**J WAKIAGA, J  
MARCH 17, 2026**

**BETWEEN**

**SILAS MAWEU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(arising from the proceedings of the chief magistrates Court  
at JKIA law courts in criminal case no E105 of 2024)*

**RULING**

1. By a notice of motion dated 9th June 2025, the applicant moved the court under Articles 25(c) 47, 48 and 50 of *the Constitution* and sections 150, 200 362 and 364 of the Criminal Procedure Code and sought the following orders:
  - a. That the court be pleased to issue an order compelling the prosecution /officer commanding station(OCS) Mutito- Adei police station to supply to the applicant certified copies of OB no 2/218/8/24 and OB no 2/17/8/24
  - b. That the court be pleased to order the recalling of PW1 PW2 and PW3 for further cross examination
  - c. That the court be pleased to order the recusal of the Honourable trial Magistrate currently presiding over the applicant's criminal trial on the grounds of bias, breach of fair trial rights and denial of procedural justice.
  - d. That the court be pleased to order that the applicants trial file be severed from that of the co-accused persons to allow the applicant to proceed independently.
2. The application was grounded on the grounds that the applicant was coerced by the trial court to plead to fresh unsubstantiated charges of threatening to kill one of the prosecution witnesses in the ongoing



- matter, despite not being supplied with the charge sheet or OB number indicating such a compliant was ever made.
3. That the act of coercion and lack of disclosure of material evidence gave rise to a real possibility of bias , justifying the recusal of the presiding magistrate
  4. That this court has supervisory jurisdiction under Article 165(6) and (7) of *the Constitution* and sections 362 and 364 of the CPC .
  5. The application was supported by an annexed affidavit of the applicant in which it was deposed that he was charged with the offence of dealing with wildlife trophies contrary to section 92(2) of the *Wildlife Conservation and Management Act* at the ongoing trial , wherein he made several requests to be furnished with copies of OB No 2/18/8/24 and 2/17/8/24 from Mutito Adei Police station to enable him prepare for his defence and that the court directed that the trial must proceed and that the OB numbers would be availed at a later date . which reasonably exposed him to an unfair trial inn violation of his rights to unfair trial and to adequate facilities for preparations of his defence.
  6. It was contended that PW1 PW2 and PW3 had already testified and should therefore be recalled for further cross- examination once the relevant documentary evidence is availed and that since the trial magistrate had exhibited reluctance to enforce his right to access relevant evidence and demonstrated conduct that raises a reasonable apprehension of bias and lack of impartiality the same should be recused .
  7. The respondent did not file a response.

### **Submissions**

8. At the hearing hereof , the applicant reiterated the content of his affidavit and stated that he requested for the OBs but was not given and that he required the same for purposes of cross-examining PW2 and PW3. It was his submissions that the trial court was bias against him and therefore should be changed.
9. On behalf of the Respondent it was submitted that the OB was given to the applicant and that the same had been very hostile to the prosecution and the court deciding on which witness to take and which not to. His application for recusal should be made to the trial court and that case cannot be separated noting that there are only to more witnesses remaining to the close of the prosecution case.

### **Determination**

10. From the pleading herein and the record of proceedings before the trial court, it is clear that the issues raised by the applicant herein , goes to the style and conduct of the trial court and as submitted by the prosecution, the issues of the bias of the court towards the applicant and the recusal of the same are issues which ought to be raised before the said court in the fist instance and not to this court by way of application for revision. This applies to the applicants order for the recall of witnesses.
11. On the issue of the OB records shows that the applicant had been supplied with the same and now that the matter herein is at an advance stage, these are issues which the applicant can raise on appeal in the event that the same is convicted .
12. Having been charged together with his co-accused , there is no rule which allows the court to separate the trial as the witnesses for the prosecution are the same and facts upon the prosecution case is founded is in respect of the applicant and his co-accused.
13. I therefore find no merit on the application herein; the applicant having failed to demonstrate any error of illegality on the proceedings herein.



14. The application dated 9th June 2025 is hereby dismissed and a copy of this ruling to be placed in the trial courts file. This file now stands closed.

**DATED SIGNED AND DELIVERED AT MAKADARA THIS 17<sup>TH</sup> DAY OF MARCH 2026**

**J. WAKIAGA**

**JUDGE**

In the presence of: -

