

REPUBLIC OF KENYA
IN THE HIGH COURT OF
CRIMINAL CASE NO. E016



KENYA AT NAKURU
OF 2024

REPUBLIC.....ODPP

- VERSUS -

GLADYS WAMBUI MWANGI ----- 1ST ACCUSED

RAHAB MUKENYI AROMBA -----2ND ACCUSED

ALEX MUHANJI OKWEMBA ----- 3RD ACCUSED

JAMES MWAURA NGIGI ----- 4TH ACCUSED

NICHOLAS CHEGENYE MUDEGU ----- 5TH ACCUSED

RULING

1. The application under consideration is an oral application for the recall of prosecution witness No. 1, 2 and 3 for cross examination by Accused 1 and 2 (Advocate Wambeyi).
2. The other accused person generally support the application for recall to cross examine without explicitly stating their desire to cross-examine PW1, PW2 and PW3.
3. The background to the application is that **Nicholas Chegenya Mudegu** – Accused 5 failed to attend Court on 2nd April, 2025 and Court was informed he fell while undergoing surgery at the Nakuru Provincial General Hospital.
4. The hearing was thus disrupted after PW9 was stood down and the disruption lasted until the 18th March, 2026 when the Court was notified (officially) on the demise of Accused 5 – **Nicholas Chegenya Mudegu** and the prosecution moved the Court to withdraw the

charges against him.

5. It was after allowing the *Nolle Prosequi* and while fixing hearing dates that **Mr. Wambeyi** for Accused 1 and 2 urged the Court to order the recall of PW1, PW2 and PW3 for cross examination in view of the development and withdrawal of charges as against the 5th accused (now deceased).
6. The application was generally supported by **M/s Wahome** and **Mr. Matoke** for Accused 3 and Accused 4 respectively.
7. The application is unopposed by the state that;
8. The case is a backlog; the offence occurred in 2017 and trial commenced in 2018 with the witness subject to the application having testified on 19th May, 2018 (8 years ago).
9. That the demise of Accused 5 has not affected the other co-accused.
10. That the prosecution might encounter challenges in tracing witnesses eight years after they testified and they were then employees of Accused 1 and the deceased. That memory of witnesses has faded.
11. That the application is intended to further delay hearing. No grounds have been laid as basis of the recall sought.
12. The Applicants in rejoinder attacked the prosecution's case as lacking legal clothing that witnesses can lose memory, that tracing witnesses is not difficult as the prosecutor has contacts to all witnesses and no attempt has been made to trace them. He urged

the Court to allow.

Analysis

13. This application is brought pursuant to **Section 150** of the **Criminal Procedure Code** and **Section 146 (4) Evidence Act** that empowers this Court to recall a witness either for further cross-examination of further examination in chief and if such parties are successful then their respective counter parts shall have a corresponding right.
14. In this instance the 1st and 2nd Accused have applied to recall PW1, PW2 and PW3 for cross-examination. To this extent the application is untenable in law. Accused 1 and 2 cross-examined the witnesses extensively between 19th April, 2018 and 28th November, 2018 and thereafter six more witnesses testified and Accused 1 and Accused 2 never sought a recall of the subject witness for any reason whatsoever.
15. However, the application suffers merit deficiency in that for this Court to exercise my discretion under **Section 160** of **Criminal Procedure Code** the Court has to be persuaded that:
 - i. Whether the recall sought is necessary in the advancement of the cause of justice.*
 - ii. Whether the prior examination in chief of cross examination was in incomplete or improperly conducted.*
 - iii. Whether there has been discovery of new evidence warranting a recall limited to such a discovery of new evidence warranting a recall limited to such a discovery.*

- iv. That the application is not intended to further delay conclusion.***
- v. That the parameters of the recall are well demarcated and articulated.***
- vi. That the recall sought shall not prejudice the state and family of victim.***

16. This Court is afraid to observe that the application for recall of witnesses for cross examination is without basis or merit for the following reasons:

- 1. Accused 1 and Accused 2 cross-examined the three witnesses and concluded and no issue (s) ever arose with regards to their evidence.**
- 2. The Applicants have not show-cased any basis for recalling PW1, PW2 or PW3 while hastening to add that accused persons are individually charged and not collectively.**

18. I thus I am unable to find any merit in recalling any witness or in fact for what reason.

I accordingly dismiss this application.

**Ruling Dated, Signed and Delivered at Nakuru
On this day of 19th March 2026.**

**S. Mohochi
JUDGE**