



Republic v Kamau (Criminal Case 23 of 2023) [2026] KEHC 4688 (KLR) (9 April 2026) (Ruling)

Neutral citation: [2026] KEHC 4688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 23 OF 2023**

DR KAVEDZA, J

APRIL 9, 2026

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES MBUGUA KAMAU ACCUSED

RULING

1. The accused is facing a charge of murder contrary to sections 203 and 204 of the Penal Code. During the hearing of the prosecution’s case, Mr. Njoroge, learned counsel for the accused, raised an objection regarding the evidence of PW3 Veronica Anindo Abwanga. He submitted that the incident occurred in 2021 and that the defence had been supplied with statements from other witnesses, but not that of PW3. He argued that this amounted to an afterthought and that admitting such evidence at this stage would be prejudicial. He maintained that only witnesses whose statements had been disclosed should be allowed to testify.
2. Ms. Timoi, for the prosecution, responded that she did not have a definitive list of what had been supplied. She stated that when PW3 was previously stood down, she had instructed the investigating officer to ensure that all relevant statements and documents were served on the defence. The officer attempted service but counsel declined. She relied on the authorities *Denis Edminal Apa and 7 others vs Republic* [2012] eKLR, to support the position that the prosecution may call additional witnesses if disclosure is continuous.
3. Mr. Njoroge acknowledged that he had declined service of the statement and noted that it was not included in the committal bundle lodged in the CTS. He requested three days to file authorities, citing a decision from Nyeri High Court that an accused cannot be ambushed with undisclosed evidence.
4. I have considered the objection and the rival arguments. The issue for determination is whether the objection is merited. At the time of writing this ruling, the defence was yet to file the authorities they



- sought to rely on in support of their position. That notwithstanding I will determine the objection on its merits.
5. The practice of disclosure in the Kenya springs from *the Constitution* of Kenya 2010 and case law as there is no legal procedure on disclosure set out in the Criminal Procedure Code of Kenya. Article 50 (2) of *the Constitution* deals with disclosure. The relevant provisions of *the Constitution* of Kenya that deal with disclosure are:
 - i. Article 50 (2) (c) of *the Constitution* of Kenya: The right to have adequate time and facilities to prepare a defence.
 - ii. Article 50 (2) (j) of *the Constitution* of Kenya: The right to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence the prosecution intends to rely on.
 6. *Majanja J in Thuita Mwangi & 2 others v Ethics & Anti-Corruption Commission & 3 others* [2013] eKLR held that:

“The right to be provided with material the prosecution wishes to rely on is not a one-off event but is a process that continues throughout the trial period from the time the trial starts when the plea is taken. The reality is that there will be instances where all the information relating to investigation may not all be available at the time of charging the suspect or taking the plea. The disclosure of evidence, both inculpatory and exculpatory, is easily dealt with during the trial as the duty to provide the material is a continuing one and the magistrate is entitled to give such orders and directions as are necessary to effect this right. When the fresh material is provided, the accused is entitled to have the time and opportunity to prepare their defense.”
 7. Similarly, in *Republic v Wilson Chelelgo Cheponin* [2019] eKLR, J. E. M. Muriithi emphasised that short delays to recall witnesses, or to adjourn proceedings to allow the defence time for preparation, serve the interests of a fair trial for both the accused and the complainant. The prosecution may continue to call witnesses before closing its case, provided the defence is given sufficient time to prepare.
 8. From the above decisions, the court emphasises that disclosure is a continuing duty on the part of the prosecution and that the mere fact that a statement was not available at the commencement of the trial does not, of itself, render it inadmissible. The accused retains the constitutional right under Article 50(2)(c) and (j) to adequate time and facilities to prepare a defence, and this right must be respected once the additional material is disclosed.
 9. The court notes that, in this case, the investigating officer attempted to serve the defence with PW3’s statement, but service was declined by the accused’s counsel. While the refusal to accept service is a matter for the defence, it does not prejudice the prosecution’s right to present its case fully.
 10. In practical terms, this may require the adjournment of proceedings to allow the defence sufficient opportunity to review the statement, investigate its contents, and prepare for cross-examination of the witness. The prosecution is not restricted from calling additional witnesses while its case remains open, provided that the defence is given reasonable notice and an opportunity to respond. Any concern that the accused might be ambushed or unfairly prejudiced is mitigated by these safeguards.
 11. The court finds that allowing the disclosure and continued examination of PW3’s statement, along with adequate time for the defence to prepare, preserves both the right of the accused to a fair trial and the integrity of the judicial process.



12. Accordingly, the objection by the defence is found to be lacking in merit and is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL 2026.

D. KAVEDZA

JUDGE

In the presence of:

Ms. Timoi for the State

Mr. Mbugua h/b for Njoroge for the Accused

Karimi Court Assistant

