

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL CASE NO. 70 OF 2023

REPUBLIC.....
PROSECUTOR

VERSUS

AHMED RASHID HASSAN.....
....ACCUSED

RULING.

1. Dr. Khaminwa, learned counsel appearing for one of the victims, Mr. Ali Mohamed, made an oral application seeking the disqualification of Mr. Danstan Omari from appearing in these proceedings on account that counsel had allegedly acted for one of the victims in another matter. Counsel submitted that discussions had previously been initiated with Mr. Omari and Mr. Cliff Ombeta regarding the existence of a possible conflict of interest, though no consensus had been reached. It was contended that the application herein remained alive and ought to be heard and determined on its merits.
2. In response, Ms. Timoi, learned prosecution counsel, opposed the application and submitted that the applicant was neither a witness nor a victim directly participating in the present proceedings.
3. Mr. Omari, in reply, clarified that Mr. Cliff Ombeta was not appearing for the accused person in this matter. Counsel further submitted that the recognised victims in the proceedings were adequately represented and that any other person purporting to participate, absent formal recognition by the prosecution or the Court, amounted to a busybody. Mr. Omari maintained that no

formal application had been served upon the defence for consideration by the court.

4. The court issued directions for the applicant to file a formal application for hearing and determination. However, no such application had been made at the time of writing this ruling.
5. That notwithstanding, the applicant had already made an oral application and the court is duty bound to consider it on its merit.
6. I have carefully considered the rival oral submissions. The issue for determination is whether sufficient grounds have been established to warrant interruption of the proceedings to accommodate the intended application for disqualification of counsel.
7. From the record, Dr. Khaminwa indicated that he represents one Ali Mohamed, whom he described as a victim in these proceedings. The prosecution, however, disputed that assertion. In **Joseph Lendrix Waswa v Republic [2020] KESC 23 (KLR)** the Supreme Court underscored that victim participation in criminal proceedings is not automatic and must be exercised within the confines of the law and in a manner that does not prejudice the trial process. The Court further observed that a victim must demonstrate a proximate and identifiable interest in the proceedings.
8. In the present case, it has not been established that the said Ali Mohamed falls within the statutory definition of a “**victim**” under section 2 of the **Victim Protection Act, 2014** namely, a person who has suffered direct injury, loss or damage as a result of the offence.
9. The Court further takes note of the prosecution’s position that the applicant is neither a witness nor a direct victim in these

proceedings. No material has been placed before Court to controvert that position. Consequently, the nexus between the applicant and the core of this criminal trial is, at best, peripheral.

10. Further, although reference was made to Mr. Cliff Ombeta allegedly having represented the applicant in another unnamed matter, it should however be noted that Mr. Ombeta is not on record for the accused in the present proceedings. The allegation therefore lacks any immediate nexus to the conduct of the ongoing trial.
11. The allegations raised from the bar remain unsubstantiated and unsupported by affidavit evidence or documentary material capable of establishing the existence of an actual or perceived conflict of interest. Allegations touching on professional conflict are grave in nature and cannot be determined on the basis of bare oral assertions. Such matters require a properly constituted application setting out, with precision, the factual and legal basis upon which the relief sought is anchored.
12. Courts are under a constitutional obligation to ensure expeditious disposal of criminal proceedings and to guard against unnecessary interruptions that may occasion delay.
13. Accordingly, the oral application lacks merit and is hereby dismissed.

Orders accordingly

**Ruling dated and delivered virtually this 13th day of May
2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Timoi for the Prosecution

Ms. Martina h/b for Mr. Omari for the Accused

Dr. Khaminwa absent

Ms. Karimi Court Assistant.

ORIGINAL