



REPUBLIC OF KENYA



KENYA LAW
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**Amunga v Republic (Miscellaneous Criminal Application
E126 of 2019) [2025] KEHC 9059 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E126 OF 2019
RN NYAKUNDI, J
JUNE 27, 2025**

BETWEEN

ELPHAS AMUNGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the State

1. The applicant is before this court seeking orders as follows:
 - a. That the complainant herein is ready and willing to withdraw this case voluntary since the complainant claimed to have not identified these attackers.
 - b. That I have already communed with the hearing with 3 witnesses hence remaining with 2 witnesses, whereby the trial magistrate has decline to withdrawn the same.
 - c. That I hope and believe that the Hon. Court shall be pleased to admit my application has been further supported by the annexed affidavit of the said Elphas Amunga
2. The application is supported by an affidavit sworn by the applicant in which he deposed as follows:
 - a. That I am a male adult Kenyan citizen of sound of mind versed with the fact of this matter and hence competent to swear this affidavit.
 - b. That I was convicted and sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of penal code.



- c. That I have already communed my trial with three witnesses before hon. C. Obulutsa hence remaining with the 2 witnesses.
- d. That the complainant herein Mr. David Ondolo Asula is ready and willing to withdraw this case voluntarily and in this effect he has appeared thrice before the court seeking the court to admit him withdraw this case because he did not recognize those who robbed him.
- e. That the trial magistrate inquired from him to use formal procedure to withdraw the case which he did but the same was not embraced by the relevant parties.
- f. That I pray that the court proceedings and the trial be halted until the matter is resolved by the high court.
- g. That the trial magistrate ordered that the case should proceed from where it had reached because the complainant has failed to seek assistance from the DPP at Eldoret branch.
- h. That I hope and believe this court has all preserved powers and discretion to admit application and order otherwise.
- i. That I have lodged an appeal which has high and overwhelming chances of success.
- j. That I pray to be bonded pending determination of the appeal.
- k. That the offence is bail able and its success will be in line with constitution.
- l. That what I have deponed herein is true correct to the best of my knowledge, information and belief

Decision

- 3. I have read through the application and it is my considered view that this court has no jurisdiction to over a matter of withdrawal. The file marked as closed.
- 4. It is ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 27TH DAY OF JUNE 2025

.....

R. NYAKUNDI

JUDGE

