



**Republic v Njuguna & another (Criminal Case 66 of 2023)
[2024] KEHC 1581 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 66 OF 2023
DR KAVEDZA, J
FEBRUARY 22, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

LUCY WAITHERA NJUGUNA 1ST ACCUSED

JOHN HARI GAKINYA 2ND ACCUSED

RULING

1. The matter for determination is an application for adjournment made by the prosecution. On January 18, 2024, one prosecution witness provided testimony during the trial. Earlier, the learned prosecution counsel had informed the court that he was expecting two witnesses. However, only one prosecution witness testified, and subsequently, an adjournment was requested. The grounds presented were that despite the confirmation of attendance by the two witness one of them became unreachable by phone. The prosecution urged the court to grant the adjournment requested.
2. In response, Mr. Ochichi, learned counsel for the 1st accused, and Mr. Wanaina, learned counsel for the 2nd accused, opposed the application. They argued that the matter had experienced significant delays and the prosecution had been provided with ample time to call their witnesses. Moreover, they contended that there is no legal requirement specifying the exact number of witnesses the prosecution must present to prove their case. Additionally, they highlighted the adverse impact of the trial on the personal lives of the accused persons. Consequently, they urged the court to dismiss the application and compel the prosecution to conclude their case.
3. In rebuttal, Mr. Mulama, learned prosecution counsel, countered by stating that the witnesses scheduled to testify had been bonded. He asserted that the failure of one witness to appear in court was beyond his control. Furthermore, he indicated the intention to call five additional witnesses before concluding the prosecution's case.



4. It is trite law that the discretion to grant or refuse adjournments is within the ambit of the trial court. It must be borne in mind that an application for adjournment must be supported by reasons that sufficiently explain the absence of an accused person, his advocate, or a witness in court on the day under review. It is trite law that trial court is under no obligation to grant an adjournment if it is not convinced that the application is supported by good and credible reasons. The constitutional rights of all the accused persons in the case must be taken into consideration in granting or refusal of adjournment. A situation where one or two accused persons are likely to delay the trial of the rest by frequent adjournments that are not justified must be avoided at all costs.
5. It goes without saying that the prosecution witness who was bonded and expected in court could not be traced. Eight prosecution witnesses have since testified in the matter since its inception in 2020. Article 50 (2) (e) of the Constitution stipulates as follows:

“(2) Every accused person has the right to a fair trial, which includes the right—

(e) to have the trial begin and conclude without unreasonable delay;”
6. In the instant case, while I recognize that the accused persons’ right to a speedy trial is enshrined in the Constitution, the reasons for the delay of this matter have been explained, to the satisfaction of this court, by the prosecution. The grave nature of the charge in this case calls for this court to strike a delicate balance between the right of the accused persons to a speedy and fair trial, and the right of the victims of the crime to justice for the offence committed. The rights of the victims of the crime are more pronounced in this case considering the fact that it involves a capital charge of murder.
7. The state counsel explained, at length, the challenges he encountered in reaching his witness. In addition, he contended that this was the first time he had sought an adjournment and the delay if any had not been occasioned by him. I find that the reasons advanced by the state in seeking to adjourn the matter are both plausible and compelling.
8. Under the above circumstances, I am convinced that allowing all the witnesses to testify would be the most appropriate thing to do since the accused persons are out on bond.
9. It is therefore my humble view that the accused persons will not be prejudiced at all if the witnesses lined up by the state are granted an opportunity to testify, especially if the same is done within the shortest period possible.
10. The upshot of the above analysis is that the application for adjournment is allowed.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 22ND FEBRUARY, 2024

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mulama for the State

Mr. Ochichi for the 1st Accused

Mr. Wanaina h/b for Mr. Wandugi for the 2nd Accused



