



**Republic v Kebwaro & 5 others (Criminal Case E040 of 2022)  
[2024] KEHC 4411 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4411 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E040 OF 2022  
SM MOHOCHI, J  
APRIL 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EVANS MICHORI KEBWARO ..... 1<sup>ST</sup> ACCUSED  
KEVIN OMONDI OTIENO ..... 2<sup>ND</sup> ACCUSED  
JOSPHAT SIMIYU JUMA ..... 3<sup>RD</sup> ACCUSED  
JULIUS OMONDI OTIENO ..... 4<sup>TH</sup> ACCUSED  
DENNIS ALUSIOLA MMBOLO ..... 5<sup>TH</sup> ACCUSED  
ISAAC KINYANJUI NG'ANGA ..... 6<sup>TH</sup> ACCUSED**

**RULING**

1. This is a ruling following conclusion of plea bargain entered into by the 1<sup>st</sup> accused person and following which the advocates for accused two, accused three, accused four, accused five, and accused six opposed an application by the prosecution to have the sentence held in abeyance until fulfillment of the plea bargaining obligations by the accused which includes the following: -
  - i. Recording of witness statements and testifying for the prosecution.
  - ii. Return of all the exhibits produced Exhibit 1 (a)-(j) – Exhibit 5 to the investigating officer for custody and to be produced in this trial as it proceeds.
  - iii. A preparation of the pre-sentence victim impact statement. The prosecution requested for 30 days before the trial hearing dates may be fixed.



2. The views of the victim's family must be sought in every plea bargain Section 137 (c) of the *Criminal Procedure Code* and Section 9 (1) (c) of the *Victims Protection Act*.
3. The purpose of the Court calling for victim impact statement is to enrich sentencing by equipping the Court with information relating to the deceased and the impact on the victim family following the demise. This is not an issue that defence counsel for accused two, accused three, accused four, accused five, and accused six can object to. The statutory requirement is couched in mandatory terms.
4. This Court is alive to the fair trial rights of the accused to mitigate and in this instance the Court would ordinarily accord accused one an opportunity to prepare and mitigate which would not occur today.
5. On the converse the defence counsel opposed the application on the grounds of delay in the hearing on the case relating to their respective clients.
6. With regards to the prosecutions application for release of exhibits produced for safe custody of the investigating officer this Court is of the considered opinion that in view of the main trial not yet commencing it will be prudent to have the exhibits held by the investigating officer until continuation of the trial. I am unpersuaded as to what prejudice shall be occasioned on accused two, accused three, accused four, accused five, and accused six should this Court allow the investigation officer to keep the exhibits to await commencement of the trial.
7. This Court is determined to balance the rights of the accused and those of the prosecution.
8. In this particular instance this Court is of the view that a hearing date should be fixed, together with a mention date for mitigation and sentencing of accused one. This Court accordingly allows the application by the prosecution on the following terms: -
  - i. That the Exhibits 1(a – j), 2, 3, 4, and 5 shall be released back to the investigating officer for safe custody to await continuation of the trial.
  - ii. The investigating officer is directed to conclude the plea bargaining obligations with the Accused One within 30 days from today.
  - iii. This Court makes an order that Accused 1 shall be held by DCI Nakuru North as he fulfils the plea bargain obligations.
  - iv. The Probation department to prepare and file a victim impact statement within 30 days from today.
  - v. This Court shall fix a mention date where Accused One shall mitigate and the Court shall sentence prior to the continuation of the trial as scheduled.
9. This Court thus proceeds to fix the further hearing dates together with the mention date such that the plea bargain by the 1<sup>st</sup> Accused shall not delay the trial in any way.

Mention for mitigation and sentencing shall be on the 12<sup>th</sup> June, 2024.

Hearing shall be on the 17<sup>th</sup> July, 2024.

**Signed, Dated and Delivered Virtually at Nakuru**

**this 29<sup>th</sup> April 2024**

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**Mohochi S.M**



**JUDGE**

**In the presence of:**

**Court Assistant – Schola**

**Prosecutor – Jacky**

**Accused**

