



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 45 OF 2015**

**IN THE MATTER OF ARTICLES OF THE CONSTITUTION**

**IN THE MATTER OF THE WITNESS PROTECTION ACT**

**IN THE MATTER OF WITNESS PROTECTION RULES, 2015**

**AND**

**IN THE MATTER OF APPLICATION FOR ORDERS FOR WITNESS PROTECTION**

**REPUBLIC.....APPLICANT**

**R U L I N G**

1. The Witness Protection Agency (W.P.A.) has brought an ex parte Chamber Summons dated 15<sup>th</sup> December 2015, seeking one key order, namely:-

**“2. THAT this Honourable Court be pleased to grant witness protection orders for the witnesses to testify in camera or closed sessions.”**

On the following grounds:

**“1. That the Applicant is a witness in Criminal Case.**

**2. That the witnesses are in danger as a result of the evidence they have agreed to give.**

**3. That unless protection orders are granted, there is a high risk of this vulnerable witness being threatened and intimidated.**

**4. That a Memorandum of Understanding under Section 7 of the Witness Protection Act has been entered between the witnesses and the Witness Protection Agency.**

**5. That it is in public interest and justice that protection orders be issued to protect the witnesses.”**

2. The chamber summons is expressed to be grounded upon Article 50 of the Constitution, Sections 4 (3) (a), (b), (c) and 16 of the Witness Protection Act, and is supported by the affidavit sworn by xxxxx, a protection officer with the Witness Protection Agency, and annexures thereto.

3. The application is in respect of the Murder trial in High Court Criminal Case pending before this court. The Accused therein are xxxxx and xxxxxx who are charged with two counts of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The gist of the particulars is that on xxxxxxx at xxxxxxx they jointly murdered two persons, namely, xxxxxx and xxxxxx.

4. Section 16 of the Witness Protection Act provides as follows:-

**“The High Court may make a witness protection order if it is satisfied that:-**

**(a) the person named in the application as a witness-**

**(i) was a witness to or has knowledge of an offence and or has been a witness in criminal proceedings relating to the offence or**

**(ii) is a person who, because of his relationship to or association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act;**

**(b) the life or safety of the person may be endangered as a result of his being a witness**

**(c) a memorandum of understanding has been entered into by the witness in accordance with section 7; and**

**(d) the person is likely to comply with the memorandum of understanding.”**

5. The grounds on the face of the application are fleshed out in the supporting affidavit. On a perusal of the same, it is evident that the six persons who are the subject of the application are witnesses in the pending murder trial. Due to the animosity between the two communities who have laid competing claims to the land that is the cause of the dispute between them, and in view of the threats issued generally by members of the Community, the safety of the named witnesses may be endangered upon testifying.

6. The witnesses have entered into a Memorandum of Understanding with the Witness Protection Agency and I have no cause to doubt their future due compliance with the terms therein.

7. On the other hand, under Article 50 of the Constitution, the accused persons in the murder trial have a right to a fair trial, which includes public trial. This provision is however qualified by the provisions of sub article (8) which states that:

**“This article does not prevent the exclusion of the press or other members of public from any proceedings if the exclusion is necessary, in a free and democratic society to protect witnesses or vulnerable persons, morality, public order or national security.”**

8. On the basis of the risk assessment reports prepared in respect of the six witnesses, I am persuaded

that it would be justified for their protection, to exclude members of the public during the trial proceedings when the said vulnerable witnesses will give evidence in court.

9. In the circumstances, I do grant prayer 2 of the Chamber summons in respect of the vulnerable witnesses.

10. I further direct that this file be kept in safe custody by the officer in charge of the High Court Registry.

Delivered and signed this **18<sup>th</sup>** day of **December, 2015**.

**C. MEOLI**

**JUDGE**



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