



## Controversial collapse of Arror and Kimwarer case points to ODPP's capture and incompetence

**December 20, 2023, Nairobi, Kenya:** An anti-corruption court on December 14, 2023, acquitted former Treasury Cabinet Secretary (CS) Henry Rotich and eight others of fraud-related charges that cost the country Sh63 billion—money that would have been used to build two major dams in Kenya, Arror and Kimwarer. The court said the prosecution failed to lead the case and called only eight out of 49 witnesses. Forty-one witnesses were not cross-examined in what appeared to be a carefully choreographed prosecution-led acquittal.

From the outset, the court observed that the prosecution's approach was designed for failure, characterized by a reckless dereliction of duty. The collapse of the Arror and Kimwarer case confirms the ODPP is politically captured and part of a conspiracy to defeat justice.

**However, this outcome did not come as a surprise to us.**

Various stakeholders, including the civil society, the Judiciary, and the public, have consistently voiced concerns regarding the ODPP's handling of high-level criminal cases, especially those with political connections. We have observed a worrying emerging pattern where cases have fallen apart due to withdrawal by the prosecution or ended in acquittals because of poor prosecution.

In the Arror and Kimwarer case, it became evident that the prosecution was committed to deliberate failure. The trial faced continuous frustration, prompting both Magistrate Eunice Nyutu and High Court Judge Nixon Sifuna to openly call out the prosecutors in charge of the case, Geoffery Obiri and Oliver Mureithi. The management of this case exemplified what can be termed "prosecution-assisted acquittals": the prosecution mischievously outdid the defense counsel's efforts in securing the release of the suspects.

The fact that the prosecution scheduled and failed to interrogate 41 witnesses who could have submitted credible evidence to win the case indicates incompetence and manipulation. The prosecutor who led this case must not handle any prosecutorial role and must be removed from that office through any legal means.

DPP Renson Ingonga must know that prosecutorial powers are not a plaything that can be exercised at whims between his office and political power holders to absolve suspects with political connections.

The deliberate undermining of cases for political reasons is not a recent development.



The pattern began in the reign of former DPP Noordin Hajj. Despite the former DPP's public assurances that charges were only filed when fully satisfied that the cases met the evidentiary threshold to secure a conviction—which in criminal cases must be beyond a reasonable doubt—his office frustrated the same matter with the same evidence and the same witnesses that informed their decision to charge. ODPP is such a critical cog in the criminal justice system, and the right to justice and the fight against corruption must not be handled with such casualness.

### Our demands

We are demanding the following from the DPP:

1. To assert authority, the DPP must seize the Arror and Kimwarer case, redirecting it towards its foundational principles, *raison d'être*, and constitutionalism. Immediate and decisive action is required. This entails promptly assuming responsibility for the issue and undertaking urgent remedial measures. It is crucial to identify any personal culpability among his officers that led to the wrongful identification of the 41 witnesses as credible—if indeed they were. Subsequently, the DPP should initiate a swift process to ensure that the actual culprits are brought to court and charged accordingly. If Rotich and eight others were the real suspects, they must face the law again.
2. If the DPP does not do this, we will take the requisite legal measures including individual action against the relevant officers in the ODPP who acted outside the principles of the Constitution and the law in handling the case, and in so doing have led to the loss of public resources including financial and human resources spent on the investigation, prosecution, and adjudication of the matter.

Further, we demand that:

3. Former CS Rotich and the eight other suspects involved in the Arror and Kimwarer dam case should be barred from public office appointments. Their acquittal is suspect and requires a comprehensive, independent investigation to examine the circumstances surrounding the collapse of the case thoroughly.

Signed

1. Kenya Human Rights Commission (KHRC)
2. Transparency International-Kenya (TI-Kenya)