



REPUBLIC OF KENYA



**Birembo v Republic (Criminal Case 13 of 2017)  
[2025] KEHC 2135 (KLR) (Crim) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE 13 OF 2017**

**K KIMONDO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**CEDRICK LISAMULA BIREMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is an application by the accused to lift the warrant of arrest issued on 4<sup>th</sup> February 2025. The notice of motion is dated 7<sup>th</sup> February 2025 and predicated upon the deposition of his learned counsel, Mr. K. A. Nyachoti.
2. He avers that the accused was unaware of the directions made on 18<sup>th</sup> March 2024 re-allocating the matter to a new court or the mention slated for 26<sup>th</sup> September 2024 before the Deputy Registrar. He adds that no summons were served pursuant to the directions of 4<sup>th</sup> December 2024. Counsel avers that on that date, the accused attended the registry and was advised that the Judge was not sitting. The accused was thus in the dark about the court session of 4<sup>th</sup> February 2025 during which the warrant was made.
3. The application is contested by the Republic. Learned prosecution counsel, Ms. M. Kigira, submitted that this case dates back to 2017. That only two witnesses have testified; and, that the adjournments have been engineered by the absence of the accused or his counsel. The gravamen is that since his release on bail, the accused has deliberately obstructed the proceedings.
4. Regarding the date when the warrant was issued, learned prosecutor referred to the record to show that counsel had been served with relevant notice. The Republic thus urged that the bond be cancelled until conclusion of the trial.



5. The accused faces the grave charge of murder. But he is presumed innocent at this moment. Under Article 49 (1) (h) of *the Constitution*, as read together with section 123 A (1) of the *Criminal Procedure Code*, he is entitled to bail unless there be compelling circumstances.
6. The right to bail is not absolute. In the instant case, the accused was granted bond on 22<sup>nd</sup> May 2017 with a condition to “report to the Officer Commanding Umoja Police Station once after every 60 days”.
7. It is also true that only two witnesses have testified in the matter. Since that time, the record shows that the accused was absent from court on 13/8/2019, 5/8/2019, 19/1/2019, 18/6/2021, 11/8/2021, 1/9/2021, 11/5/2022, 26/9/2024 and 4/12/2024.
8. In order to appreciate the impact of the absenteeism on the trial, the last witness testified on 17<sup>th</sup> July 2017 before Lesiit J (as she then was). On 5<sup>th</sup> August 2019, for instance, the prosecution had 8 witnesses present but the trial could obviously not take off. To be fair to the accused, there was no proof he had been served. On some other occasions the accused was himself present but his counsel was absent.
9. But turning now to the present issue, on 18<sup>th</sup> March 2024, I directed that the trial be handled by Kavedza J and set a mention date for 26<sup>th</sup> September 2024. Notice was to issue. On the latter date the accused or his counsel did not appear in court. Although counsel for the accused deposes he had no notice, the record shows that an email was delivered to his address on 26<sup>th</sup> September 2024 to attend court on 4<sup>th</sup> December 2024. Neither the accused nor his counsel appeared before the Deputy Registrar.
10. The Deputy Registrar then set a mention date for 4<sup>th</sup> February 2025. The accused or his counsel were again absent leading to the warrant of arrest and summons to the surety. That must be what precipitated the present motion. On 11<sup>th</sup> February 2025, the accused was brought to court under warrant. For the aforementioned reasons, I suspended his bond pending this ruling.
11. Granted the above history, this would be a proper case to recall the bond. But I will temper justice with some mercy by reinstating the bond with the existing sureties. The warrant of arrest issued on February 4, 2025 is lifted. The accused is now cautioned on the record about his past breaches against the terms of his bond. He is also reminded on the record that he must attend all mentions and hearings in this case.
12. Furthermore, and in the interests of justice, I add the following new condition to his bond: The accused must attend a special mention before the Deputy Registrar of the Criminal Division at Nairobi once every three months the first such mention to be held on 3<sup>rd</sup> March 2025 and until the conclusion of the trial or further orders of the court. In default, his bond will be cancelled and the sureties called to account.
13. Finally, I direct that this trial be fast-tracked. Directions under section 200 of the *Criminal Procedure Code* shall now be taken and a convenient hearing date allocated.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

The accused.



Mr. Nyachoti for the accused/applicant instructed by K. A. Nyachoti & Company Advocates.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

