



**Mulunga v Republic (Criminal Appeal E005 of 2024)  
[2025] KEHC 2865 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2865 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E005 OF 2024  
DR KAVEDZA, J  
MARCH 12, 2025**

**BETWEEN**

**CAPTAIN JOSHUA MUANGE MULANGA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered  
by the Court Martial sitting at Moi Airbase in Court Martial  
Case No. 19 of 2021 Republic vs Cpt Joshua Muange Mulanga)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for the offence of conduct to the prejudice of conduct to the prejudice of good order and service discipline contrary to section 121 of the *Kenya Defence Forces Act*. The particulars of the offence were that on the 11th February 2021, the appellant received Kenya shillings Fifty thousand (Kshs 50,000.00) via mobile number +25471504xxxx in the pretext of influencing the recruitment of 160667 Recruit Abdulaziz Barisa Shambaro and 160661 Recruit Francis Nguah Mwandenge into the Kenya Defence Forces, an act he knew or ought to have known constitutes an offence. He was sentenced to serve two years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He argued that the prosecution failed to prove the offence charged beyond a reasonable doubt.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).



4. The prosecution case was as follows: PW1, Emmanuel Nguah Mwandenge, a nurse and businessman, testified that his son, PW5 Francis Nguah Mwandenge, was interested in joining the Kenya Defence Forces (KDF). Three days before the recruitment, PW1 shared this information with a friend, Fredrick Charo, who claimed he could assist. PW5 successfully enlisted on 11th February 2021. Later that day, at approximately 1630 hours, Charo informed PW1 of his son's success and demanded Kshs 200,000, purportedly for the officer who facilitated the enlistment. Fearing his son's removal, PW1 raised Kshs 150,000 and sent it to mobile number 0715047768, registered under Amanda Kigen. He later confirmed the transaction with his friend. Subsequently, PW1 received a call from the Department of Defence (DOD) questioning his involvement in financial transactions during recruitment. He denied any knowledge of Captain Mulanga or Amanda Kigen.
5. PW2, Mohamed Shambaro Barisa, a businessman from Tana River County, testified that he took his brother, PW4 Abdulaziz Barisa Shambaro, to the recruitment centre at Minjila on 9th February 2021. He approached a friend, Mr. Tonui, a Directorate of Criminal Investigations (DCI) officer, for assistance. Tonui agreed to help. At around 1630 hours, PW2 was informed of his brother's successful enlistment and was asked to pay Kshs 300,000 as agreed. He handed the amount in cash to Tonui at around 1700 hours. On 31st March 2021, he received a call from an unknown person inquiring about his brother's recruitment. Later, a caller identifying as Major Arisa informed him that he had been seen handing over money at Minjila on recruitment day. PW2 admitted the transaction and recorded a statement at Garsen Police Station. He denied knowing Captain Mulanga or giving him any money.
6. PW3, Kipkorir Tonui, a DCI officer, testified that while he was on duty near the recruitment centre, he was not involved in the exercise. He confirmed knowing PW2 since 2019 and stated that on the Saturday preceding recruitment, PW2 left him with Kshs 300,500 for safekeeping. On recruitment day, he received a call from Mr. Onyango, instructing him to deposit part of the money to mobile number 071504xxxx and Kshs 90,000 to another number, 070791xxxx. After confirming with PW2, he executed the transactions. He stated that he was unaware of the purpose of the money or the identity of the recipient, Amanda Kigen. Two months later, he was summoned by Major Arisa from DOD for questioning regarding the transaction. Ten months later, he was called to DCI headquarters in Kiambu, where he met KDF officers led by Major Onyamo and recorded a statement on 6th December 2021.
7. PW4, Abdulaziz Barisa Shambaro, a private in the KDF, testified that he was enlisted into KDF on 9th February 2021. On recruitment day, he presented his certificates, completed physical and medical tests, and successfully received a calling letter based on merit. After the recruitment, he met his brother, PW2, who mentioned that a CID officer had requested Kshs 300,000. He reported for basic training at RTS on 12th April 2021, underwent medical tests on 13th April 2021, and was issued a service number on 14th April 2021. He was later called by the military police to record a statement regarding recruitment malpractice.
8. PW5, Francis Nguah Mwandenge, also a private in the KDF, testified that he was enlisted on 12th February 2021 after passing all necessary tests, securing second place in his division. He reported to RTS on 12th April 2021 and submitted his calling letter. Two days later, he was approached by two officers, one a Major, who questioned him about the recruitment process. He was later interviewed about any irregularities but stated that he believed his father did not engage in any malpractice.
9. PW6, Major Andrew Onyamo, a commanding officer of the Military Police Special Investigation Unit, testified that he identified the appellant, Captain Joshua Muange Mulanga, in connection with recruitment malpractice in Tana River and Mombasa. His investigation revealed that officers Major Chemjor and Captain Kiprotich Mutai had received money from recruits. He traced the money



to Amanda Kigen, whose number had received funds from Emmanuel Mwandenge and Mohamed Shambaro. Kshs 50,000 from this amount was later transferred to Phylis Kariithi, the wife of Captain Mulanga.

10. Exhibits presented included calling letters for PW4 and PW5, the KDF 2021 recruitment team composition, MPesa statements, registered subscriber details for 0715047768, and marriage certificates linking Major Chemjor to Amanda Kigen and Captain Mulanga to Phylis Kariithi.
11. In his defence, the appellant, Captain Joshua Muange Mulanga, testified that he was a Kenya Navy officer recruited in 2011 and commissioned in 2014. He was part of the recruitment team in Kilifi and Tana River but was responsible only for selecting Navy recruits under the direction of Lt. Colonel Christine Kuria. He denied involvement in the recruitment of PW4 and PW5, stating that Army officers handled their enlistment. He argued that financial transactions between Amanda Kigen and his wife Phylis Kariithi were unrelated to recruitment malpractice.
12. The appellant contended that the MPesa records did not establish any link between him and the money sent. He denied knowing PW1, PW2, PW3, PW4, and PW5 and refuted any instructions to Amanda Kigen regarding money transfers. He maintained that there was no evidence proving his involvement in obtaining money by false pretences or influencing recruitment outcomes.
13. On re-evaluation of the evidence adduced before the trial court, it was clear to this court that the trial court appreciated the charges that the prosecution was supposed to prove in order to secure the conviction of the Appellant.
14. This court has re-evaluated the evidence adduced before the trial court. It has also considered the submission made by the parties to this appeal. Section 121 of the [Kenya Defence Forces Act](#) states thus:

“ Any person subject to this Act who commits any act, conduct, or neglect to the prejudice of good order and service discipline commits an offence and shall be liable, on conviction by a Court Martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.”
15. On the merits, it was the prosecution’s case that the appellant had obtained money from the complainants by fraudulently manipulating the KDF recruitment system by inducing potential recruits to pay money to secure their recruitment. The prosecution’s evidence against the appellant includes testimonies from multiple witnesses detailing fraudulent KDF recruitment schemes.
16. PW1, Emmanuel Mwandenge, transferred Kshs 150,000 to a mobile number registered under Amanda Jeruto Kigen. PW2, Mohamed Shambaro, handed Kshs 300,000 in cash to PW3, Kipkorir Tonui, who later sent Kshs 200,000 to the same number and Kshs 90,000 to another recipient. Investigations by PW6, Major Andrew Onyamo, revealed that Amanda Jeruto Kigen’s account was being used by Major Chemjor, one of the recruitment officers and that Kshs 50,000 was later transferred to Phyllis Wairimu Kariithi, the wife of the appellant, Captain Mulanga.
17. The question for determination is whether the prosecution provided a nexus between the transactions, the complainant, and the appellant. Moreso because section 121 of the [Kenya Defence Forces Act](#), 2012 does not outline what specific acts would prejudice an officer’s good order and service discipline. That is left for the authorities to decide.
18. Thus, in my view, to prove such misconduct just like any other criminal offence, the state ought to establish both actus reus and mens rea on the part of the appellant. In this case, the actus reus was shown since the appellant received the money from the complainant. Secondly, the appellant was in



a position to induce the recruitment of army officers. In addition, the prosecution established a link between the appellant and the monies paid. In *Ali v R* (1990) KLR 154. The court stated that,

“for a conviction based on circumstantial evidence to be deemed proper, the inculpatory facts relied on as circumstantial evidence must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. It is also necessary to be sure that there are no other co-existing circumstances which could weaken or destroy the inferences of an accused person’s guilt, derived from circumstantial evidence”

19. The key question is, does the defence offered by the appellant in the lower court raise doubts as to his guilt? Does it rebut the above ingredients? Is it reasonable in the circumstances?
20. The appellant denied knowing the witnesses or participating in any fraudulent recruitment activities. However, he failed to provide a credible explanation for the funds received by his wife. The prosecution argued that the movement of money indicated an attempt to conceal the fraudulent transactions.
21. In my assessment, the appellant’s explanation lacked reasonableness and failed to counter the compelling evidence presented by the prosecution. After weighing the explanation offered by the appellant and the prosecution evidence, I find that the prosecution evidence is truthful, credible, and probable as opposed to the highly improbable defence offered by the appellant. The appellant’s defence did not raise any reasonable doubt about the prosecution case. Overall, the evidence suggests the appellant played a central role in the fraudulent recruitment operation, leading to charges against him.
22. The prosecution provided evidence that confirmed the exchange of money between the complainants and the appellant. The Appellant’s defence in that regard did not dent the otherwise cogent, consistent, and culpatory evidence that was adduced against him by the prosecution witnesses. This court therefore holds that the prosecution did prove, to the required standard of proof beyond any reasonable doubt the charge against the appellant.
23. The upshot of the above is that the appellant’s conviction by the court martial was therefore safe and is upheld.
24. Upon conviction, the appellant was sentenced to serve two (2) years imprisonment. Section 121 of the KDF Act provides for a term not exceeding two years or any lesser punishment provided upon conviction.
25. The sentence meted was therefore proper and lawful. In the premises, the appeal is found to be lacking in merit and is dismissed.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF MARCH 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Bosire for the Appellant

Timoi h/b Mutuma for the Respondent

Tonny Court Assistant

