



**Republic v Wankio & 3 others (Criminal Case E074 of 2022)
[2025] KEHC 9272 (KLR) (Crim) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9272 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E074 OF 2022
MW MUIGAI, J
JUNE 16, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CYPRIAN ROBI WANKIO 1ST ACCUSED

LINAH KOGEY 2ND ACCUSED

JOHN CHENGO MASHA 3RD ACCUSED

JAMES RONO 4TH ACCUSED

RULING

1. This Court delivered Ruling on 30/1/2025 granting ODPP leave to amend the Charge(s)/Information in consultation with IPOA and any other relevant institution as was alluded to during the hearing
2. The Amended Charges would be the subject of plea taking on 3/3/2025
3. 30 days were granted to the Police to continue and ensure that all steps were taken to apprehend the 11th Accused person, [Mohammed Baa] A Report to that effect was to be presented by Inspector General of Police Or through Senior Official/Representative in National Police Service to Court.
4. The ODPP was to consider withdrawal of charges against 11th Accused if all efforts to trace him were futile.
5. On 3/3/2025 the Court was informed of pending in Court of Appeal was Criminal Application No E290 of 2024. The Court adjourned the proceedings to await outcome of the proceedings in Court of Appeal and Upon decision filed in this Court mention date was to be on priority basis through Deputy Registrar of the Criminal Division.



6. On 2/4/2025, Ruling of CoA in Criminal Application No E290 of 2024 dated 21/3/2025 was placed on the Court Record and all parties' and their respective Counsel were served copies to familiarize with the decision so as to ensure compliance.
7. The Court of Appeal also delivered a Ruling on 21st March and stated as follows:-

“Before we exit this matter, we are of the view that although we have found that the suspects' appeal will not be rendered nugatory, the novel issues raised in the appeal need to be determined without undue delay. In that regard, we certify Nairobi COA Criminal Appeal No. E124 of 2024 urgent, and direct that the same be listed before the Registrar of the Court within 14 days from the date hereof for issuance of directions on the hearing of the appeal. This should be done with a view to having the appeal listed for hearing in the coming term of the Court.”
8. On 7/5/2025; Chief Inspector Peter Kanagi on behalf of Inspector General of Police presented Report dated 2/5/2025 confirming efforts made to trace and apprehend the 11th Accused person were futile.
9. The Office of Director of Public Prosecution (ODPP) reviewed the case and presented the Amended Information/Charge Sheet dated 2/5/2025 in Court and uploaded on the CTS and were ready for plea-taking.

All Parties/Counsel were served with the Copies of Amended Charge Sheet/Information in compliance with article 50 2 (b) of *the Constitution*.
10. The Mental Assessment reports for respective 4 Accused persons were placed in the Court file, examination was conducted much earlier pursuant to court orders by Hon K.Kimondo J of 21/11/2022.
11. The ODPP presented 9 Counts/charges and alternative Counts that were read to 4 Accused persons in open Court in English and to each Count the Accused persons pleaded not guilty to the charge.
12. The amended Charge Sheet /Information of 2/5/2025 was read to the 4 Accused persons in English and each Accused person pleads as follow:- the of statement and particular of the charge
 1. Count 1- 1st Accused – John Chengo Masha– Not true
 2. Alternative Count I – Not true.
 3. Count II – 2nd Accused - Lina Kogei -- Not true.
 4. Alternative Court II – Not true.
 5. Count III -1st Accused – III (a) –(g) – Not true.
 6. Alternative Count III – Not true
 7. Count IV – 2nd Accused - Count IV –(a) –(g) – Not true.
 8. Alternative Count IV – (h) – Not true
 9. Count V- 1st Accused
 10. Alternative Count V – a-(aa) & (bb) – Not true
 11. Count VI – 2nd Accused- a-(aa) & (bb) – Not true
 12. Alternative to Count 6 – a-(aa)(bb) – Not true.



13. Count 7- James Rono 4th Accused – paragraph (1) -Not true
 14. Alternative to Count 7 -Not true
 15. Count 8 - Cyprine Robi Wankio 3rd Accused - Not true
 16. Alternative to Count 8 – Not true.
 17. Count 9 – Cyprine Robi Wankio 3rd Accused Not true
 18. Alternative to Count 9 – Not true.
13. The Court entered plea of not guilty to all Charges/Information read to all Accused Persons in in English and they Pleaded Not Guilty. The Court entered Pleas of Not guilty for the Accused persons on each Count read as the statement and particulars of the offence.

Bail/bond Application

14. Mr. Baraza for ODPP did not oppose the Accused persons being released on bail and/or bond terms as Victims and/or their Defense Counsel nor IPOA presented any compelling reasons. He asked that the Accused persons deposit their passports in Court.
15. Mrs Nzuki for IPOA informed the Court that circumstances had changed and they had not communicated to ODPP if they had reservations on the Accused persons being released on Bail/bond. The attendance of Accused person is required for ends of justice and bond terms ought to be in terms of offences preferred.
16. Mr Nelson Havi; Lead Counsel for all Accused persons urged the Accused persons to be released on similar or same bond terms and the Trial to be expedited.
17. Mr Miyare for 3rd Accused person urged the Court that Art 49 & 50 of *the Constitution*, bail/bond is a constitutional right ODPP has not presented compelling reasons to curtail grant of bail bond. From the Court Record, this matter commenced in 2022 and all accused persons have attended Court dutifully and religiously since they were admitted to personal recognizance/bond of Ksh 200,000/-[on 14/11/2022 by Hon. Ogembo J] the 3rd accused will continue to attend Court if and when required. Bail/bond is granted to ensure the Accused person's attend Court and she is not a flight risk.
18. Mr.Lumwachi for 2nd Accused person stated that reasonable bond terms to be granted as the 2nd Accused diligently attended Court since 2022 to-date. The 2nd Accused is a law -abiding citizen and not a flight risk and the Court to consider retaining the present bail bond terms.
19. Mr.Munoko for 1st Accused person submitted that the 1st Accused person exhibited immense respect to court and attended Court on every date he was required to attend Court. He is anxious to be exonerated from the charges and therefore will come to Court and proceed with the hearing. The Court was urged to retain the same bond terms or Free Bond.
20. Ms. Wanjiru for 4th Accused person Urged the Court to release the 4th Accused on reasonable bond terms unless there are compelling reasons advanced by the ODPP/Prosecution. The 4th accused has fixed abode and there is no evidence that he is a flight risk, he is a husband and a father.
21. Mr Muganda appearing with Ms Wanjiru for 4th Accused reiterated, the Accused persons were suspects and after the Court of Appeal Ruling they took plea and are now Accused persons and the Court will determine who is and the role of a victim , the Accused person in the hearing relying on the Supreme Court case of Joseph Hendrix Waswa -reference made to paragraph 8. The Accused persons



- participated in Inquest proceedings Pre trial proceedings and have not absconded attending Court on all dates. ODPP & IPOA have not raised compelling reasons in opposing bail/bond being granted. Therefore, reasonable bond/bail terms be granted on same terms retained.
22. Mr.Otieno for Victims stated that the Accused persons were granted anticipatory bail before charges were read to them, therefore the issue of bail/bond has not been addressed and determined. The [Criminal Procedure Code](#) should apply; the Accused persons shall make their application for bail/bond and the ODPP and Victims shall respond. Granting Bail/bond is a constitutional right but in considering the application for bond views of and fairness to victims should be considered too. The entire process must connote fairness to Accused persons and victims. The Court should also take into account that these are serious offences and for the 1st time under [International Crimes Act](#). The accused persons are Police Officers and the balance of power requires that extra measures are taken in light of the power they wield. The terms should include that the Accused persons do not go to the scene of incident, interfering with witnesses/victims or tampering with evidence.He objected to bail/bond terms retained as requested by the Defense team for accused persons.
 23. Mr Osman for KNHCR stated the matter of bail and bond was before the Court that is ceased of the matter and shall determine bail/bond based on materials placed before the Court.
 24. Mr Manwa for LSK brought to the attention of the court that Court orders of 30/1/2025 and those orders of 25/7/2024 have not been complied with regard to 11th Accused person to take plea. The amended Charge sheet/Information charged only 4 persons/suspects only of the 12 suspects. What happened to the 7 suspects who had been included before Plea-taking and were the Court orders complied with in these circumstances? It was/is important for public record that these court orders are complied with.
 25. Mr Mango LSK associated with the above submissions by Co Counsel and stated that the right to bail/bond is not absolute but subject to compelling reasons that prevent the accused persons being placed on bond.
 26. Compelling reasons are described as forceful and convincing as was described in Jackton Mutende case. The 11th Accused person absconded and has not been arrested to date, the Accused persons are flight risks. The Court will consider the safety and security of victims as the amended charge sheet/information had full names of victims they were not redacted. The 2nd accused missed attendance once and did not provide medical records. Counsel relied on provisions of Section 123 of CPC and paragraph 4:9 Bail & Bond Guidelines 2015 in guiding the Court on grant of bail/bond and sought Pre-bail Reports to be provided/availed to Court.
 27. Mr Baraza raised concern that the Defense Team and Victims crossed the line in submissions beyond the Waswa(supra)case; the Victims and their Defense Counsel may participate in proceedings but not take up the procedural role that remains with ODPP -Right to Bail/Bond is enshrined in Chapter 4 of [the Constitution](#) on Bill of Rights, The accused persons do not need to apply for Bail/Bond it is provided for, they have not been made aware of compelling grounds to warrant restriction of that right and freedom and therefore ODPP is not opposed to grant of Bail/Bond.
 28. All Counsel belong to LSK and therefore LSK is more of a witness just like IPOA & KNCHR and therefore there exists conflict of interest. The Court referred to the Ruling of 21/3/2025 by C.A. paragraph 45 that expressly made the interested parties' part of proceedings and allowed to participate as such in terms of parameters set by SC Waswa case.
 29. Reference made to Kakamega Criminal Case E001 of 2022 Manyibe & 4 Others v DPP



30. Mr Makori for ODPP sought to raise the issue of transfer of this Case from Nairobi to Kisumu. The Court confirmed the issue was raised earlier as confirmed by the Court record and would be raised later in the proceedings.
31. Mrs. Nzuki for IPOA reiterated that she communicated with the Investigation Officer who was in the process of filing affidavit objecting/opposing bail/bond being granted. They sought 7 days to formally respond to the issue of bond/bail and the issue of why of 12 suspects only 4 Accused persons were charged and what happened to the 7 suspects and when the file was forwarded to ODPP the evidence was sufficient to charge all 12 suspects.
32. Reference was made to the case of Republic v Lelman & 4 Others 2016KEHC 992 KLR.
33. The Court adjourned the proceedings to allow Pre-Bail to be filed and served Reports. The Court noted from the Record that the Accused persons attended Court without fail since 2022 and the ODPP had no compelling reasons to object to bail.
34. The Court granted the Accused persons to remain on the personal bond/bail of 200,000/- granted in 2022 pending Pre bail Reports and IPOA Affidavit to be filed and served.
35. The matter was slated to proceed on 12/6/2025.
36. On 12/6/2025 Mr Baraza for ODPP reiterated earlier position that there were no compelling reasons to oppose grant of bail/bond. IPOA is mandated by law to supervise Police work, therefore if there is any evidence of interference of witnesses/victims they may file such report with the court interference of witnesses is a criminal offence. They can request Witness Protection Agency to protect the witnesses/victims and ensure their safety and security. Pre-Bail Reports are not binding.
37. Mr. Kinoti of IPOA stated they wrote to Witness Protection Agency to assess the what protection measures that will be taken to protect witnesses.
38. The charge sheet on the CTS was not redacted save for the physical copy filed in Court and served to Parties/Counsel
39. The Probation Officer Mr Musitya sought more time to complete Pre-Bail Reports and serve. The Court adjourned the matter for Amended Charge Sheet to be redacted the names of witnesses/victims removed except for initials. The Report from Witness Protection agency be availed and Pre-bail reports to be served and filed.
40. On 4/6/2025, Pre-bail Reports were ready filed and not served to all parties and later served so as to allow parties/Counsel submit if need be; on grant of Bail/bond if need be.
41. On 10/6/2025, Mr Makori for ODPP, they had not been served with any pleading with regard to the application of bail/bond and therefore do not oppose grant of bail/bond
42. Mrs. Nzui -IPOA stated that they are not opposed to grant of bail/bond but subject to the following conditions;
 - a. Terms that will ensure availability and attendance of Court
 - b. Terms that will ensure the integrity of the Justice System Paragraph 3:1(b) & (d)of Bail & Bond Policy Guidelines 2015
 - c. The Court to retain same/similar terms granted on 12/5/2025 when the Accused persons were retained on the personal recognizance.



- d. The terms were; not to interfere with witnesses/victims, not to tamper with evidence, not to leave jurisdiction of the Court, not to commit an offence, not to visit scene of crime Nyalenda Obunga Nyamasaria, Kondele and Nyamita which are in Kisumu and to attend Court on all dates
- e. The Accused persons or their proxies do not disclose/divulge details, contacts of the witnesses/victims which they may be in possession of from the unredacted Amended Chargesheet/Information
- f. The accused persons to deposit bail with suitable sureties to enhance commitment to attend Court
- g. The Accused Persons to deposit travel documents in Court or alternatively inform the Court of any visit/travel and seek the Court's authority to travel outside the Country
- h. The Accused persons to report to the nearest IPOA offices every 3 months until conclusion of the case.

Mr W.Otieno opposed bail on the following grounds;

- a. The Accused persons are Senior Officers and 1 of them set to retire at the end of July 2025
- b. The seriousness of the offences and they are 1st of their kind of offences in Kenya. The Accused persons are Commanders of Police and the subordinates have access to scene of crime and witnesses/victims.
- c. The seriousness of the offences will cause Accused persons create a web in Kisumu and Nairobi areas and other parts of the Country and therefore, the Court should consider not granting bail/bond to protect witnesses/victims.
- d. The remaining 3 Accused persons are Senior Police Officers as confirmed from Pre-bail Reports and they are charged and are still Commanders of subordinate Officers and are able to access the scene of crime
- e. The Personal Cognizance was granted when they were suspects and had not been charged and status now changed to that of Accused persons
- f. The seriousness and severity of terms charged in a formal Trial Court and they are still Commanders of Police Units the Court should consider if this is an appropriate case to admit Accused persons to bail/bond when they are Commanders and a case of this nature is proceeding. He sought bond refusal.

43. The Prosecution ODPP & IPOA did not oppose bail/bond this time round but made elaborate conditions.

The Victims Counsel Mr Osman, Mr Mbanya, Mr Mango reiterated earlier submissions and concurred with Mr Otieno's submissions by expounding on the same grounds. The emphasis is on the possibility



of interference with witnesses/victims and evidence especially the scenes of crime. The issue disclosed by Pre-bail reports that the Accused persons are Senior Officers in service which raises the possibility of interference

44. The Defense Counsel Mr. Munoko, Mr. Miyare reiterated their submissions mainly, bail/bond is a constitutional right, one is presumed innocent until found guilty, the Accused persons are not primary offenders but charged as secondary offenders and command responsibility is a novel triable issue 1st of its kind to be tried in Kenyan Court and law.

LAW

45. Bail is a constitutional right enshrined in Article 49(1)(h) of *the Constitution*. The test the Court is required to use to deny bail in appropriate cases is similarly stated in Article 49(1)(h) of *the Constitution*. It is only upon the Prosecution (ODPP) showing of compelling reasons that the Court will deny bail. Section 123 & 123A of the CPC and Bail & Bond *Policy Guidelines of 2015* provide guidance on consideration of bail & bond Application.
46. Article 49(1)(h) of *the Constitution* grants bail for all offences, the gravity of the offences notwithstanding. The presumption of innocence is enshrined in Article 50(2) of *the Constitution*. Section 123 of the *Criminal Procedure Code* allows the accused person to request for bail, and the court to grant it.
47. The Bail & Bond *Policy Guidelines of 2015* stipulate the factors that are considered in deciding to grant or not grant bail or bond to the Accused person. Current practice on application of bail or bond is informed by such factors as:

The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty; The strength of the prosecution case; Character and antecedents of the accused person; the failure of the accused person to observe bail or bond terms; likelihood of interfering with witnesses; need to protect the victim of crime Likelihood of interfering with witnesses.

Where there is a likelihood that the accused will interfere with prosecution witnesses if released on bail or bond, he or she may be denied bail or bond. However, bail or bond will only be denied if

- (i) there is strong evidence of the likelihood of interfering with prosecution witnesses, which is not rebutted, and
- (ii) the court cannot impose conditions to the bail or bond to prevent such interference.

The need to protect the victim or victims of the crime from the accused person. The relationship between the accused person and potential witnesses age of accused if the Accused is a child/young offender; whether Accused person is a flight risk; whether accused person is gainfully employed; maintenance of public order, peace or security and protection of the Accused person.

48. In *Rep v Dwight Sagaray & others* High Court Criminal Case No. 61 of 2012, Milimani. Hon.R. Korir, L.J.

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference.



It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others..., at least some facts must be placed before court otherwise it is asking the court to speculate.”

49. In the case of Ahmad Abolafathi Mohammad [2013]eKLR, Hon L.Achode L J (as she then was) considered the issue of accused persons being a flight risk and having been dishonest about their identities and observed as follows:

“The probability that the respondents may not surrender themselves for trial: In Daniel Dela Amega v Republic [2006] eKLR, to which I was referred by learned counsel, Mr. Wandugi, Makhandia J, (as he then was) held that if there is merited fear, that the respondents may abscond if granted bail, then the court would ordinarily refuse to admit such an accused person to bail.”
50. Republic versus Danson Mgunya & Another High Court at Mombasa, Criminal Case No. 26 of 2008 Constitution ought to be interpreted in a manner that enhances the rights and freedoms of individuals Compelling reasons must be stated, described and explained. If based on belief, the justification or basis for the belief must be demonstrated or shown.
51. Primary consideration is whether the accused person shall attend court and be available for trial (the omnibus criterion). Other factors to be considered within the parameters of this principle
52. The Prosecution ODPP has the burden of proving that there are compelling reasons to deny release on bail/bond. To deny bail/bond the Prosecution ODPP must provide cogent evidence and not mere allegations, the claim ought to be substantiated. Compelling reasons may include failure to attend court Commit or abet commission of a serious offence; seriousness of the offence or endanger the safety of victims individuals or the public or interfere with witnesses or evidence. See R v Richard David Alden High Court Nairobi Criminal Case 48 of 2016.
53. This Court embraced the legal provisions on grant/denial of bail and bond and considered the detailed and rival submissions by Parties through respective Counsel on grant/denial of bail/bond.
54. The matter at hand commenced in 2022 where after an Inquest proposal to prefer charges against the named 12 suspects was to be effected. From then till 2025, the proceedings entailed numerous Applications for hearing and determination. It is only after the Court of appeal Ruling of 21/3/2025 that settled myriad preliminary legal issues that plea-taking occurred with 4 of the 12 suspects accused and charged with various offences under the *International Crimes Act* and the Rome statute of the International Criminal Court.
55. Therefore, the seriousness of the offences, 9 Counts with alternative Counts is telling and obvious. There are witnesses and victims of those who were raped tortured or killed who ought to be protected from possible harm whose safety and security is paramount and privacy preserved.
56. However, it behoves the ODPP to present prove and/or confirm compelling reasons to deny bail/ bond at this stage, The Prosecution has intimated to this Court that there has been no report incident or affidavit sworn of interference of any witness or victim or tampering of evidence. Hence the Prosecution cannot prove or provide cogent evidence of compelling reasons.
57. On the other hand, the Victims’ Counsel have consistently demanded cancellation of personal bond of Ksh 200,000/- for each Accused person as the same was granted at a time when the Accused persons



had not been charged and pleas taken. Now they are accused persons just like other criminal cases bond/bail should be considered afresh.

58. On behalf of victims and witnesses all Counsel IJM IMLU LSK KNHCR UTU WETU are highly concerned with the safety and security of their clients during pendency of these criminal proceedings and urge in light of possibility of any interference of witnesses and tampering of evidence more so due to the Accused persons being high ranking Officers in service, their bonds should be cancelled during the ongoing proceeding
59. The Defense Counsel urge the Court to abide by legal provisions of the law, the Accused persons are presumed innocent till found guilty, they have dutifully attended Court with no incident since 2022.
60. From the above chronology of events I find as follows;
This Court appreciates the magnitude of matter and more particularly the seriousness of offences and more importantly the safety and security of the Witnesses and victims.
61. However, I find that judicial discretion and decision-making is based on tangible and cogent evidence.
62. The Accused persons are Senior Police Officers as per their Pre-Bail Reports and are in service wielding immense powers that would influence subordinates to carry out their orders.
63. Despite these facts, from the Court record, the Accused persons since release of Personal bond of Ksh 200,000/- they are attended Court consistently.
64. Since 2022 there has been no allegation of witness/victim interference so far, no report, letter, affidavit has been presented to the ODPP IPOA or by Victims themselves or their lawyers.
65. Compelling reasons must be proved through cogent and tangible evidence by ODPP in this case no Affidavit is filed by Investigating Officer or institution IPOA.
66. In the absence of any evidence for close to 7 years no interference or tampering is reported, the Accused person attended Court diligently, the Court can only err on the side of caution, if release of Accused persons it must be on stringent measures to ensure safety and security of the Witnesses/victims.
67. I was referred to the case of Republic v F.Ole LeLman & 4 Others Criminal Case 57 of 2016 and urged to deny the Accused persons bail/bond. This case is distinguished from Lelman case because in Lelman at Paragraph 65 the Court was served with a number of Affidavits sworn by cross section of interested persons opposing bail. Paragraph 69 the Prosecution showed that they had a number of witnesses under Witness Protection as there were persons who expressed fear for their lives. Paragraph 73, during Court proceedings before Hon.L.Kimaru J (as he then was) there was drama and at the start of investigations it was clear to the Judge the risks potential witnesses faced; one of the Applicants/ Accused person was in the process of self-preservation as shown in Paragraph 77 & Paragraph 78, the Applicants and some potential witnesses were from the same area.
68. The situation in the instant case is different there are no statements of affidavits of any interference.
69. Therefore, taking all the factors considered and able oral submissions by Parties/Counsel and in the interest of justice; the following are orders of this Court;
 1. The 4 Accused persons each is granted bail/bond of Ksh 1,000,000/- comprised of 2 sureties each of Ksh 500,000/-
 2. The 4 Accused persons will not to interfere with witnesses/victims, not to tamper with evidence, not to leave jurisdiction of the Court, not to commit an offence, not to visit scene



of crime Nyalenda Obunga Nyamasaria, Kondele and Nyamita which are in Kisumu and to attend Court on all dates

3. The Accused persons or their proxies do not disclose/divulge details, contacts of the witnesses/victims which they may be in possession of from the unredacted Amended Chargesheet/Information
4. The Accused Persons to deposit passports in Court
5. The Accused persons to report to the nearest IPOA offices every 3 months until conclusion of the case.
6. Warrant of arrest to remain in force for 11th suspect Mohammed Baa to be executed by NPC/IG
7. The Amended Charge Sheet/Information to redacted both physical copy and online on CTS
8. The Parties/Counsel to engage in Pre-Trial Taking into account Witnesses/victims protection under *Victim Protection Act*.
9. ODPP to file and serve Application on transfer of case 14 days each side to reply if need be.
10. Further mention for directions on 2/7/2025

RULING DELIVERED SIGNED & DATED IN OPE COURT IN CRIMINAL DIVISION HIGH COURT ON 16/6/2025 VIRTUALLY/PHYSICALLY

M.W.MUIGAI

JUDGE

