



**Republic v Poltcarp & 5 others (Criminal Case E004 of 2025)
[2025] KEHC 10657 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E004 OF 2025
TM MATHEKA, J
JULY 16, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID SILA POLTCARP 1ST ACCUSED

JANET KANINI MUTISYA 2ND ACCUSED

DOMINIC MUUNDO MUINDI 3RD ACCUSED

ISAAC MUTISO MULI 4TH ACCUSED

HARRIET BANGIBASA ALIAS NALONGO 5TH ACCUSED

HARRISON MUTUA MUNYWOKI ALIAS MCHINA 6TH ACCUSED

RULING

1. The accused persons are charged together with the others for murder contrary to section 203 as read with section 204 of *Penal Code* – that on 15/1/2025 around 2.00am, they murdered David Obenda Auka at Ngwata Area Kambua Location, Kambu Subcounty within Makueni County, with others not before court.
2. Accused 5 was on 3/6/2015 admitted to bond Kshs. 1,000,000 with 2 Kenyan Sureties each of similar amount among other conditions.

This was based on the findings of 2nd pre-bail report after the court found that the 1st one was not entirely truthful. This is what I stated:

Further to the ruling on bond for Accused 1 to Accused 4 - the only remaining issue was the bond terms for Accused 5. The pre-bail report was filed on 3/6/2025. I have carefully perused the report. The probation did not object to the release of the accused person on



bond – on condition that her passport was deposited in court. The report states that she is Kenyan – but the accused holds a Uganda passport. She has no Kenyan identity despite the fact that the report states that her Ugandan family is unknown - the report states that she is born of a Kenyan father and an unknown Ugandan mother – There is no clarity as to how she became connected to her alleged Kenyan family. If she is as Kenyan as The Probation & Aftercare Services Report is indicating - why is she holding a Ugandan passport, and no Kenyan Identity documents? Does she have a Kenyan passport? When did she apply for the Kenyan ID?

In the foregoing circumstances the 5th accused's flight risk status remains uncertain.

In the circumstances - the 5th accused is admitted to bond of Kshs. 1,000,000 with 2 Kenyan sureties each of similar amount. The passport be deposited in court. The DCI is tasked to confirm at the next mention date that the accused person does not have Kenya passport as alleged.

The following Order issued:

1. Bond at Kshs. 1,000,000 with 2 Kenya sureties each of similar amount.
 2. The passport – whose particulars are on record be deposited in court pending the hearing and determination of this case.
 3. Any other passport be availed for the same purpose – DCI to confirm this at the next mention date – investigation officer to deal
 4. The accused to appear in court as and when required.
3. On 19/6/2025 counsel for 5th accused made an application for the bond terms to be reviewed to Kshs. 600,000. These were the proceedings

Mr. Mulatya : I have an application for 5th accused - her people have been trying to secure bond terms there was problem with the chassis of the motor vehicle. Her children are still at home they cannot afford school fees – She seeks lenient bond terms – 2 sureties each of Ksh. 600,000 - she could be able to obtain sureties.

Mr. Kazungu: I leave it to court

4. I considered the application for review of bond coming a few days after concerns about her bond status. By giving inaccurate information about herself, some of it outrightly false with the apparent collusion of the Probation Officer created a situation where the court formed the view that the accused was a flight risk. I am not persuaded that there is any reason to review the bond terms. The existing bond terms are reasonable in view of the circumstances of the accused person – taking into consideration the reasons given when the bond terms were given.

The application is declined.

Regarding her children, the Police had a obligation under the *children Act* no 29 of 2022 to inform the Children Officer within the jurisdiction of the plight of the children so that a P&C file can be opened to enable the safeguarding of their welfare.

In the Circumstances, I direct that the matter be mentioned before the Deputy Registrar to follow up on the plight of the minors.

5. Regarding the 6th accused, I have perused the PACs Report. – it is revealed by the bail report that the accused has two criminal files at Makindu where he is charged with robbery with violence. That he



absconded bond in Makindu CMCRC E273/2020 which had been set at Kshs. 1,000,000 and warrant of arrest was issued against him.

It is noteworthy that when asked whether prosecution had any objection to bond in this matter with respect to this accused – there was no objection – yet there is said to be warrant of arrest against him.

Before making the final orders here I asked the accused person to confirm whether or not there were warrants against him. In the presence of the Prosecutor, he told the court that he had not absconded but had developed a mental health issue and found himself walking along Mombasa Road, called his mother who came for him . That the issue was already settled and that his bond had been reinstated.

Other than that, the family is willing to stand surety for him. The alleged fear that he may interfere with witnesses , by the brother to the deceased appears unfounded as the prosecution did not have any issue with his being released on bond.

In the circumstances his bond terms remain as granted.

Mention on 24th July 2025 before DR to follow up on.

1. The Children of the 5th accused and the P&C file
2. The issue of the 5th accused's Kenyan passport.

DATED SIGNED AND DELIVERED THIS 16TH JULY 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Accused

Mr. Kazungu for the State.

Mr. Mutanya for the 5th accused

