



**Republic v Wambua alias Mulela & 4 others (Criminal Case
E018 of 2024) [2024] KEHC 16834 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E018 OF 2024
NIO ADAGI, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC RESPONDENT

AND

PETER NZENGI WAMBUA ALIAS MULELA 1ST APPLICANT

DANIEL NZOMO KIOKO ALIAS KAMETI/KAMANAGER 2ND APPLICANT

JEREMIAH MBALUKA NZOMO 3RD APPLICANT

DANIEL MUKALA WAMBUA ALIAS NZANGA 4TH APPLICANT

PETER KILONZO MASAA ALIAS KIVULA 5TH APPLICANT

RULING

1. The Applicants/Accused Persons, Peter Nzenzi Wambua Alias Mulela, Daniel Nzomo Kioko Alias Kameti/kamanager, Jeremiah Mbaluka Nzomo, Daniel Mukala Wambua Alias Nzanga And Peter Kilonzo Masaa Alias Kivula are charged with two counts of Murder contrary to Section 203 as read with section 204 of the *Penal Code*. The particulars of the offence in Count I are that the Applicants on 7th day of July in Kangundu village, Endei Sub-Location, Kithyoko Location within Machakos County, jointly with others not before court murdered Boniface Muli Mutiso. The particulars of the offence in Count II are that the Applicants on 7th day of July in Kangundu village, Endei Sub-Location, Kithyoko Location within Machakos County, jointly with others not before court murdered Nzioki Mbuvi.
2. When they were arraigned before the court on 16th September 2024 for plea taking, they all denied the charges and their learned counsel Mr. Mutava appearing along side Ms Muli, immediately made an oral application for them to be admitted to bail or bond on reasonable terms pending the hearing and determination of his case.



3. The application was not opposed by the State and the court ordered that the probation department prepares Pre-bail reports of the Applicants.
4. The pre- bail reports for all the Applicants were filed in court on 15th October 2024. I have keenly considered the said reports as far as each of the Applicant's introduction and source of information, family background, personal circumstances, previous bail/bond history, attitude towards bond, ability to meet bond terms, Victim's circumstances, Community report and the conclusions by the Probation Officer.
5. I am able to gather that all the Applicants hail from the same locality/rural home which is Kithyoko Location, Endei Sub-Location, Muthithu village with the nearest school being Muthithu Primary. Save for the 3rd Accused/Applicant who acknowledged to have been bonded for the offence of stealing and was convicted and sentenced to serve six months probation sentence in year 2013, no bail/bond history was established for the rest of the Applicants herein. I noted that there is nothing to show that the 3rd Accused absconded the trial or failed to effectively serve the probation sentence that was imposed on him.
6. Generally, the reports describe the Applicants as hard-working persons who usually led quite life although some consumed alcohol for leisure and were engaged in casual labor and subsistence farming within their local home.
7. All the Applicants appear to have shown positive attitude towards being granted favourable bond terms and are willing to abide by the bond terms if granted.
8. All the families of the Applicants across the reports have exhibited willingness to source for title deeds to secure bond for them if granted.
9. The Victim's families on the other hand were vehemently opposed to the Applicants being considered for bond terms on account that some of the family members had received death threats from the Applicants and that some of the family members are afraid of their security and witness interference which might jeopardize justice.
10. The local administration confirmed some of the Applicants were members of the Community Policing Authority popularly known as "Nyumba Kumi" and were tasked with maintaining law and order. It was indicated that some members of the community consider the Applicants as a threat. They confirmed that the environment at the moment is hostile and the Applicants' safety is also not guaranteed. The local administration was negative and opposed the Applicants being granted bond and was of the opinion that the Applicants remain in custody for a while until normalcy is restored.
11. From the reports, the victims and the Applicants are either relatives or neighbours.
12. In conclusion, the reports recommend that the Applicants bonds be deferred to allow the Community to cool down and until key witness have testified, however this recommendation is subject to the courts discretion.
13. Article 49(1) (h) of the *Constitution* of Kenya provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released. No compelling reasons have been shown in this case.
14. The purpose of a pre-bail report is intended to inform the court circumstances that relate to the offence and guide in determining whether to release an accused person on bond and under what terms.



15. The local administration had fears of Applicants' security in the event they are granted bond. The Victims' families are apprehensive that if the Applicants are granted bond, they might accomplish the death threats issued and also interfere with witnesses. The Reports recommend that the bond be deferred until key witnesses have testified.
16. To respond to the above, this court observes that no objection has been raised by the State on the application for bond. In addition, no affidavit has been filed by the Investigating Officer to identify who are the key witnesses in the case who ought to testify first.
17. The Applicants' families have promised to protect and support the Applicants if released and ensure they attend court when required. The reports confirm that the Applicants have a fixed abode and are not a flight risk.
18. I see no reason to deny the Applicants bond. I proceed to release them on bond on conditions set out under final orders below.
19. Final Orders:
 - i. Each of the Applicants will be released upon signing bond of Kshs.500,000/= which shall be approved by the Deputy Registrar of this Court.
 - ii. Once released, the Applicants shall attend the Deputy Registrar once every two months until further orders of this court and shall also attend the court on all hearing dates without fail.
 - iii. The Applicants are restrained from issuing threats or interfering in whatever manner with witnesses or Victims' family members in this case.
 - iv. Failure to comply with the above conditions shall lead to cancellation of the applicant's bond.

It is so ordered.

DATED, SIGNED & DELIVERED AT MACHAKOS THIS 17TH OCTOBER 2024

NOEL I. ADAGI

JUDGE

