



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION NO. 60 OF 2016

SAMUEL AVASIRWA MASIMBI 1ST APPLICANT

NYEERE MUTEA JOSEPH 2ND APPLICANT

NYAGA EDWARD KABURU 3RD APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Samuel Avasirwa Masimbi, Nyeere Mutea Joseph and Nyaga Edward Kaburu faced two charges of being in **possession of Wildlife Trophies contrary to Section 95 of the Wildlife Conservation and Management Act, 203** and **dealing in wildlife trophies contrary to Section 84 as read with Section 92 of the same Act.**

They were granted bond of KShs.10 million with one surety of like sum or cash bail of KShs.5 million each. They have approached this court for review of the said bond terms which they claim are too excessive and that they amount to a denial of bond.

The affidavit in support of the application has been sworn by the 2nd accused, Nyeere Mutea on behalf of the other applicants, who deponed that they have tried to get sureties or raise the cash bail but have been unable; that efforts to have the terms reduced by the trial court have been fruitless. They promise to attend court as will be required of them.

In an application for bond, the court considers inter alia whether the accused will turn up for the trial, the seriousness of the charge and likely sentence; and whether the accused will interfere with witnesses.

No doubt, the accused are facing very serious charges which involve protection of Kenya's wildlife which is threatened with extinction. The new laws enacted in 2013, have provided very stiff penalties. For example, a conviction under **Section 84 as read with Section 92 of the Wildlife Conservation and Management Act** attracts a fine of not less than Kshs. 20 million or imprisonment for life or to both fine and imprisonment. Because of the stiff penalties, the likelihood of absconding is high and that is why the court would call for more severe bond terms to ensure that the accused do not take it lightly but must attend court. It is not a sentence because the accused are still deemed to be innocent. The terms should also not be so harsh or excessive as to amount a denial of the bond. They should be reasonable considering the circumstances of each case.

I have considered the terms granted. It is my view that the bond terms are on the higher side and I hereby

review the terms downwards as follows: Each accused may be **released on bond of KShs.2,000,000/= with one surety of like sum or cash bail of Kshs.750.000/= each.**

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF NOVEMBER, 2016.

R.P.V. WENDOH

JUDGE

14/11/2016

PRESENT

Mr. Mulochi for State

Mr. Wamache Holding Brief for Mr. Mutegi for the Accused

Ibrahim/Peninah, Court Assistants

All 3 Present, Applicants