



**Republic v Mwengi & another (Criminal Case E145 of 2023)  
[2025] KEMC 19 (KLR) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEMC 19 (KLR)

**REPUBLIC OF KENYA  
IN THE MUTOMO LAW COURTS  
CRIMINAL CASE E145 OF 2023  
LK MWENDWA, PM  
FEBRUARY 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PETER MWENGI ..... 1<sup>ST</sup> ACCUSED**

**KYALO MWENGI JOHN ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons herein are jointly charged with 2 counts.
2. The first count relates to the offence of creating disturbance in a manner likely to cause breach of the peace Contrary to Section 95(1) (b) of the [Penal Code](#). The particulars of the offence were set out as follows;

On the 2<sup>Th</sup> day of March, 2023 at about 1400hrs at Kengo Sub-location, Mathima Location of Mutomo Sub-county within Kitui County, jointly with others not before court, created disturbance in a manner likely to cause breach of peace by chasing Kivanga Benzi while armed with pangas.

3. The 2<sup>nd</sup> count relates to the same offence as in count one. The particulars are that;

On the 2<sup>th</sup> day of March, 2023 at about 1400hrs at Kengo Sub-location, Mathima Location of Mutomo Sub-county within Kitui County, jointly with others not before court, created disturbance in a manner likely to cause breach of peace by chasing Mutati Kivanga while armed with pangas.

4. Both accused persons denied each of the counts. Matter proceeded for hearing. Two witnesses have testified herein.



5. The first witness was heard by my predecessor Hon. Wang'ang'a on 11/7/2024. Upon taking over this matter and explaining the Provisions of Section 200(3) CPC, to each of the accused persons. They both opted to have the matter proceed from where it had reached. I thus heard PW 2 on 19/11/2024.
6. On 19/11/2024, the prosecution requested for a further hearing date to enable availing of the remaining witnesses. The court granted the request and matter was slated to be heard on 23/1/2025.
7. Come the said 23/1/2025, the prosecutor sought an adjournment as he did not have his file (police file) from Mutomo Police Station. The application was opposed by both accused persons and they urged the court to proceed with the hearing.
8. The court declined to grant the prayer for adjournment as the reasons advanced were not satisfactory. At this point the prosecutor indicated to the court that since he did not have witnesses in court he was going to take whatever directions the court was going to issue.
9. The court then ordered that the prosecution's case be marked as closed; consequently, the 17th of February, 2025 was reserved for a ruling on whether the accused persons have a case to answer.

### **Analysis and Determination**

10. The task before me now is to evaluate the prosecution's evidence on record with a view to establishing whether a prima facie case has been established against both accused persons on each count for the offence of creating disturbance contrary to Section 95(1) (b) of the Penal Code. In undertaking this task, I shall be guided by the finding in *Ramanlal Trambakial Bhatt v. Republic* (1957) EA; in which a prima facie case was held upon consideration of the Law and evidence, the court could convict if no explanation or rebuttal is offered by the accused person.
11. I will thus proceed to consider the Law and evidence herein. First I will take into account the offence the accused persons are facing and the ingredients thereof.
12. The accused persons are charged with the offence of creating disturbance in a manner likely to cause breach of the peace. The offence is created under Section 95(1) (b) of the Penal Code which is couched as follows;
 

“95 Any person who:-

  - (1) (a) -
  - (b) Brawls or in any other creates disturbance in such a manner as is likely to cause breach of the peace, is guilty of misdemeanour and is liable for imprisonment for six months”
13. The ingredients of the aforesaid offence are thus that the prosecution should establish that the accused person either brawled or created disturbance in a manner likely to cause breach of the peace-See *Hassan v. Republic*(2023) KEHC 27360 (KLR) and *Jacob Nthinga Ngari v. Republic*
14. In the first count, the accused persons are alleged to have chased one Kivanga Benzi while armed with pangas. According to the prosecution the said actions created disturbance and were likely to create breach of the peace.
15. Kivanga Benzi testified as PW 2 herein. He stated that he was working in the farm of Mbuvi Kasina- PW I when accused persons with others not before the court accosted him and his workmate, armed with pangas. They claimed ownership of the shamba and ordered them to leave. At this time PW 1 was with one Mutati, the complainant in count two.



16. On cross-examination by the accused person, PW 2 stated as follows;  
“I did not know whether the shamba belongs to you. I later learnt of a land dispute in the farm. You did not do anything apart from saying I vacate”
17. On cross examination by the 2nd accused person, PW 2 stated;  
“You had a panga. You did not speak to me. I don't know whether you had farmed there before”
18. The evidence before me is that the accused persons approached PW 2 as he attended to the farm of PW 1. There is no evidence to suggest. There was a brawl between the accused persons and PW 2. Indeed, PW 2 on cross-examination by 1st accused stated that he did not do anything other than asking him to vacate the farm. There is no evidence to demonstrate that any of the accused persons acted in any manner that was injurious to the peace as at material time. It is apparent that PW 1 peacefully vacated the shamba upon being so requested. I say so because the issue of being chased with a panga as set in the particulars was not mentioned by PW 1.
19. I thus hold and find the particulars as set out in the charge sheet as well as the ingredients of the offence of creating disturbance under Section 95(1)(b) *Penal Code* have not been proved. The evidence is scanty and uncorroborated. Having considered the evidence herein and case law on the ingredients of the offence herein, I find that a conviction cannot issue in the event each of the accused persons offers no explanation or rebuttal. Thus the prosecution has failed to establish a prima facie case against each of the accused persons.
20. In count two: Both accused persons are charged with chasing one Mutati Kivanga, while armed with a panga. It is alleged that this amounted to disturbance which was likely to cause breach of the peace.
21. The prosecution did not call the alleged complaint (Mutati Kivanga). There was no evidence tendered to establish the particulars of charge sheet in count two. Thus there is no evidence to support the charge sheet and I find that a prima facie case has not been established against both accused persons.

### **Disposition**

22. In light of the above findings, I find and hold that the prosecution has not established a prima facie case against both accused persons on each of the counts. Thus, in terms of Section 210 *Criminal Procedure Code* (CPC) I proceed to acquit each of the accused persons on both counts.
23. The accused persons are hereby set at liberty unless otherwise lawfully held.
24. Cash Bail of Kshs. 5000/- deposited herein for each of the accused shall be refunded to the depositors.
25. Right of Appeal 14 days explained.

**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> DAY OF FEBRUARY 2025.**

**HON. L.K. MWENDWA**

**PRINCIPAL MAGISTRATE**

