



**Republic v Mwangi (Criminal Case E069 of 2025)  
[2025] KEMC 69 (KLR) (17 April 2025) (Ruling)**

Neutral citation: [2025] KEMC 69 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL CASE E069 OF 2025  
PA NDEGE, SPM  
APRIL 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PETER MAINA MWANGI ..... ACCUSED**

**RULING**

1. It is alleged herein that the accused herein was on 08th February of 2025 at around 2230hrs at WCK area in Lake Nakuru National Park, Nakuru East sub-County within Nakuru County at GPS coordinates 37M 0174077 UTM 9965647, was found jointly with others not before court, to have entered a protected area on foot while having conveyed a trap into the protected area, namely, 40 pieces of fishing nets, 12 pieces of sacks and other fishing gears without a permit without a permit from the Director General, Kenya Wildlife Service.
2. He was ordered to be released on a bond of Kshs. 800,000/- with a surety of a similar amount. The accused is, however, now requesting for a cash bail alternative. The court called for pre-bail report which has concluded that the accused is a 38-year-old man with no record of a previous conviction and has not been previously subjected to bail/ bond. That he hails from a family that is currently going through financial struggles since they earn a modest income from casual labour and also need to support their ailing mother to meet her basic needs including catering for her medical expenses arising from numerous trips to the hospital that she requires.
3. Learned prosecution’s counsel, Mr. Moses Macharia, submitted that the accused has no good community ties, and as can be deduced from the report, and that tracing him might be difficult if he is granted a cash bail. The accused had no response to this. Surprisingly, the accused person did not challenge or respond to the report.



4. The principle law on bail- bond is in article 49(1)(h) of the *constitution* of Kenya 2010, which gives the accused person 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.
5. At the same time, the criminal procedure code empowers a court to admit a person accused of offence to bail or release on executing a bond with sureties for his or her appearance. Further, the criminal procedure code provides that the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.
6. In the case of *Republic v Robert Zippor Nzilu, Criminal Case No. 4 of 2018*, It is trite law that granting bail entails the striking of a balance of proportionality in considering the rights of the applicant who is presumed innocent on the one hand and the public interest on the other. The cornerstone of the justice system is that no one should be punished without the benefit of due process. Incarceration before trial, when the outcome of the case is yet to be determined, cuts against this principle.
7. Bail and bond decision making is however often guided by certain principles such as the right to be presumed innocent unless proven guilty, the accused person's right to liberty, the accused obligation to attend trial, right to reasonable bail and bond terms, balance between the rights of the accused person and the interests of justice and consideration for the rights of victims.
8. Bail or bond conditions should be appropriate to the offence committed and consider the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case. In *Andrew Young Otieno v Republic (2017) eKLR*, the court agreed with the Applicant that the purpose of imposing bond terms is to secure the attendance of the accused before the court during trial. The terms imposed by the trial court should not be such that it amounts to a denial of the constitutional right of the accused to be released on bail pending trial. The trial court must consider the circumstances of each accused when determining bond terms to be imposed.

#### **Determination**

9. Considering the above principles and factors, and the offences herein being serious, with hefty minimum fines imposed by statute, and the finding that even though the accused has no good community ties, he is a family man, I do find it safer to grant him a cash bail alternative of Kshs. 250,000/-, but with maintain the surety bond as imposed. In any case the bond I contact person who shall be approved by the court.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 17<sup>TH</sup> DAY OF APRIL, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Janet.....Court assistant/ interpreter

Macharia.....present for DPP

Accused person – Present

