



**Republic v Chumba (Criminal Case E2820 of 2024)  
[2025] KEMC 55 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEMC 55 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL CASE E2820 OF 2024  
PA NDEGE, SPM  
APRIL 3, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN NGETICH CHUMBA ..... ACCUSED**

**RULING**

**Background**

1. It is alleged herein that the accused herein was on 30th December of 2024 at around 1400hrs at Vietnam area in Lake Nakuru National Park, Nakuru West sub-County within Nakuru County at GPS coordinates 37M 0174077 UTM 9963190, was found in possession of wildlife trophy namely cormorant bird carcass, was found to have entered a protected area on foot and undertaking extractive activity namely fishing while in possession of 12 sacks, 3 fishing nets and 32.3kg of fresh fish with a street value of Kshs. 16,000/- without a permit from the Director General, Kenya Wildlife Service.
2. He was ordered to be released on a bond of Kshs. 30,000/- with a surety of a similar amount. The accused is, however, now requesting for a cash bail. The court called for pre-bail report which has found that the accused is a flight risk. The issue for consideration is whether that finding or recommendation by the probation officer is sufficient to make me deny the accused the right to a reasonable cash bail.
3. 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.
4. 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.



5. 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.
6. 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.
7. 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**

8. Considering the above principles and factors, and the offences herein being serious, with hefty minimum fines imposed by statute, and the finding that the accused is a flight risk, I do find it safer to maintain the surety bond as imposed. In any case the bond terms of Kshs. 30,000/- with a surety of a similar amount are deemed too lenient in the circumstances. I do therefore maintain the bond terms as imposed as cash bail is deemed inappropriate and risky in the circumstances.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS...03<sup>RD</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

Macharia: We confirm the hearing date of 18/06/25

CT: Hg 18/06/25, and Mn within 14 days.

