



**Republic v Wanjohi (Criminal Case E057 of 2025)  
[2025] KEMC 52 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEMC 52 (KLR)

**REPUBLIC OF KENYA  
IN THE MARALAL LAW COURTS  
CRIMINAL CASE E057 OF 2025  
AT SITATI, SPM  
APRIL 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH WANJOHI ..... ACCUSED**

**RULING**

1. On 11th March, 2025 the accused person pleaded not guilty to the charge of dealing in endangered species contrary to section 92(2) as read with section 105(a) of the [Wildlife Conservation and Management Act](#) No. 47 of 2013. The particulars were that on 10th March, 2025 at Lodokejek area along Kisima- Maralal highway of Samburu Central Sub-County of Samburu County jointly with others not before the court were found transporting suspected endangered tree species namely Esst Africa Sandalwood (*Osiris Loncalata*) weighing approximately 2.5 tonnes with a street value of Kshs 1, 250, 000/- using motor vehicle registration number KBG 008M Toyota Hiace without a permit from the Director General of the Kenya Wildlife Service.
2. The accused person was represented by Miss Njeri Muiruri, Advocate while Mr. Moses Ndira prosecuted the DPP's case.
3. After taking plea, the DPP opposed the immediate release of the accused person stating that the accused person hailed from Nyeri County and the court needed a bail information report to satisfy itself as to the suitability of the accused person to the admission to bailbond. Thereupon, the court called for a bail information report. In the meantime, the court admitted in evidence the seized exhibits and shortly thereafter destroyed them after samples were extracted in the court's presence.
4. On the return date of 19th March, 2025 the court received the bail information report. The report showed that the accused person hailed from Rumuruti while his family lived in Sagana and was willing to stand as surety for him using a logbook for one of the relatives' vehicles. It showed that he had an



active case Criminal File no. E050 of 2024 at the Kahawa Anti-Terrorism Court over similar charge of dealing in endangered species. The probation report indicated that the accused person was arrested in the suspected commission of a fresh and similar offence after being released on bond while proceeding with a similar case. While leaving the final decision to the court, the report recommended stringent bond terms.

5. Upon receipt of the bail report, the DPP informed the court that he would be filing a formal objection to the bond on the following grounds:
  1. the accused had a similar pending case at the Kahawa Anti-Terrorism Court;
  2. the accused under investigation for the offence of stealing and using the stolen vehicle to commit the current offence.
6. The court directed the DPP to file and serve the application on the defence by 24th March, 2025 and the defence to reply within 7 days of being served. The case was stood over to 1st April, 2025 for bail hearing.
7. On 1st April, 2025 the DPP indicated that he had not filed his application and prayed that the court considers the bail information already filed in court and would not in principle be opposed to bail. He added that the issue of the stolen vehicle was not yet concluded since the alleged owner of the vehicle had not yet provided proof that the vehicle had been reported as stolen.
8. Miss Njeri Muiruri Advocate told the court that the court should then admit the client to reasonable terms since the DPP was unopposed to the release of the accused person on bond.
9. The duty of the court is two-fold;
  2. determine suitability to bailbond;
  2. determine the terms of bailbond if found suitable.

### **Determination**

10. From the particulars of the offence, it is provided that the offence was committed jointly with others who are not before the court because they escaped during arrest. This fact shows that there are other potential actors who acted in concert with the accused who had avoided the legal process and goes to show that the tendency to avoid court attendance for this type of case is high. If the accused person is released it means that there is a real likelihood of meeting up with his suspected accomplices and probably commit other offences.
11. Furthermore, the accused person was arrested in Samburu County after being released on bond in Kiambu County in the Kahawa Anti-Terrorism Case No, E050 of 2024 which is a very recent timeline. The High Court has held that where the accused has a high chance of re-offending while out on bail, the court should be disinclined to grant bail-bond in the subsequent case. This principle was discussed by Lesiit J. (as she then was) in Republic –v- Frederick Ole Leliman & 4 Others (2016) KEHC 992 KLR (Lessit J.)
  60. Under the Bail and Bond Policy Guidelines, (BBIC) the courts have a duty to balance the rights of an accused person and the interest of justice. As much as the courts are expected to preserve the liberty of an accused person, public interest must also be taken into account. The State has a duty to preserve public safety between the time of arrest and the trial of the accused, and to protect the integrity of the criminal justice system. (See BBIC).



61. Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger an individual or individuals or the public at large; likelihood the accused may commit other offences. In this instances where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail terms; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention...
74. Evidence that an accused person is likely to commit a serious offence if released on bail is a good ground to deny bail. In this case, there is glaring proof, by the very reason why this case is in existence that the likelihood of interference is not a myth, or like Mr. Ombetta wondered, a fertile imagination on the part of the prosecution. It is real. It is a reality.”
12. While the court appreciates the DPP’ position of having no objection to bail-bond, the court’s view is that this position was taken without accounting for the real likelihood of the accused person to re-offend with the other fugitives who are still at large. The failure of the Investigating officer to conclude the inquiry of the stolen motor vehicle only speaks to and will be considered in the scheduled forfeiture proceedings against the owner of the confiscated vehicle used in the transportation of the exhibits but the court cannot be blind to and disregard such a weighty factor which the superior courts have held must be taken into account as explained in the preceding paragraphs.
13. In the court’s considered ruling, the taking into account the fact that the suspected accomplices of the accused are still at large and are likely to regroup with the accused person to commit additional offences which relate to endangered species, this a clear case that the accused should not have bond however stringent since there is a real likelihood that he will continue to commit other offences once released on bail-bond. He shall remain in custody during the pendency of the trial. The DPP shall also amend the charges to reflect the correct tonnage of the recovered exhibits which was ascertained during the production of evidence by the investigating officer. Right of appeal is 14 days.

**DATED, READ AND SIGNED AT MARALAL THIS 1ST DAY OF APRIL, 2025**

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**HON. T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE - MARALAL LAW COURTS**

