



**Republic v Muchiri & 10 others (Criminal Case E088 of 2025)
[2025] KEMC 247 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEMC 247 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E088 OF 2025
PA NDEGE, SPM
MAY 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ISAAC MUCHIRI 1ST ACCUSED
VICTOR OKOTH 2ND ACCUSED
ROBERT KAINGA 3RD ACCUSED
DANIEL OMONDI 4TH ACCUSED
COLLINS ODUOR 5TH ACCUSED
PETER NJOROGE 6TH ACCUSED
PARMESA LEKIRAPACH 7TH ACCUSED
LEVITICUS PHOGISIO 8TH ACCUSED
ELIZABETH WANJIRA 9TH ACCUSED
SHARON CHEPTOO 10TH ACCUSED
HELLEN AWINO 11TH ACCUSED

RULING

1. It is alleged herein that the accused persons herein were on 9th January 2025 at around 1300hrs, at Area 41 in Lake Nakuru National Park, Nakuru West Sub-county within Nakuru county, found to have entered into a protected area without a permit or any other lawful exemption contrary to Section 102(1)(a) as read with Section 102(1)(h) of *wildlife conservation and management act* Cap 376 Laws of Kenya. Moreover, in the second count the accused persons are charged with the offense



of Undertaking Extractive Activity in Wildlife Protected Area without a Permit or any other Lawful Exemption contrary to section 102(1)(g) as read with Section 102(1)(h) of the *Wildlife Conservation and Management Act* Cap 376 of The laws of Kenya with the particulars being that the accused persons on 9th January 2025 at around 1300hrs at area 41 in Nakuru West sub-county within Nakuru county were found jointly undertaking extractive activity namely fishing and were found in possession of fish weighing 6.40kgs, 3 sacks and 5 fishing nets into protected area without a permit from the Director General, Kenya Wildlife Service. Upon pleading not guilty, the accused persons, except the minor (Accused No. 5¹) were granted bail or bond terms pending their trial, with each granted a bond term of Kshs. 400,000 each with one surety of a like sum or cash bail amounting to Kshs. 150,000.

2. The 3rd accused person is now requesting for a review of the cash bail and bond terms; which application is the subject this ruling. The counsel for the accused person relied on the presumption of innocence which provides that an accused person has a right to be presumed innocent, further stating that the accused person is a man of straw (poor man) and that the court on review to grant the accused person reasonable bail and bond terms proposing to present the accused person's father as a contact person.
3. The Bail Information Report dated 5th May 2025, confirms that the accused person is a 20-year-old man of straw from a family of low socio-economic status, and in as much as the family is willing to do everything in their power to raise the required bond or bail amounts, they are limited by their low socio-economic status. Moreover, the accused, as per the bail information report, is reported to be a responsible young man who is well-integrated with the local community and family, and his father vouched for his character expressing willingness to ensure the accused attends court as required. The accused person's family reported that they would be able to raise only Kshs, 10,000 and that his father Jackson Lukale would stand surety for him. The bail information report also outlines that the accused may not be considered as a flight risk.
4. The prosecution did not oppose this application for bond/ bail review. However, the prosecution counsel submitted that the amount proposed by the probation officer is too low considering the nature of offense and the penalty it attracts. He therefore proposed that the cash bail be reviewed in a manner that will reflect the gravity of the offence and that the same be accompanied with requirement for a contact person.
5. 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. The Criminal Procedure Code empowers a court to admit an accused person to bail or release on executing 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. It is trite law that granting bail entails the striking of a balance of proportionality in considering the rights of the accused who is presumed innocent and, on the other hand, the interest of justice and likelihood of the accused to abscond from court when required to avail himself/herself. In this case, it has been established in the bail information report, that the accused is well-integrated with the society and is not at flight risk and in the event, he absconds court, he has a strong community tie that can easily facilitate his tracing. Moreover, the accused person's father proposed that he would stand in surety for the accused expressing willingness to ensure that the accused attends court as required.
7. The purpose of bail and bond is to secure the attendance of the accused person to court. The Bail and Bond Policy Guidelines, restated as general guidelines at Paragraph 4.9 that: "In terms of substance,

¹ The minor was released on a cash bail of Kshs. 3,000/- by the plea court on 13/01/25



the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail”.

8. Moreover, the Bail and Bond Policy Guidelines general principles guiding bail and bond decision-making at paragraph 3.1 (c), outlines the accused person’s obligation to attend trial by providing that: ‘Bail and bond provide guarantees that accused persons will attend trial. They are securities that aim to procure the release of an accused person from legal custody together with an undertaking that he or she will appear for trial.’
9. It is therefore evident that the main objectives of bail and bond terms is to guarantee that the accused persons will attend trial. The terms thereof should therefore seek to incentivize the undertaking that the accused will appear for trial as required and not be misconstrued as a form of punishment or penalty as that would undermine the presumption of innocence of the accused persons.
10. Paragraph 3.1 (d) of the Bail and Bond Policy Guidelines outlines that the accused person has a right to reasonable bail and bond terms providing that:

...bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account 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.

Determination

11. Upon further consideration of the above factors and principles, in determination, the 3rd accused should be issued with a reasonable bail and bond terms by inclining towards the circumstances and facts in this case. The accused may therefore be released on bond of Kshs. 200,000 with one surety of a like sum or cash bail amounting to Kshs, 75,000. In addition, and in case of the cash bail imposed herein, the accused shall present his father for an approval as a contact person.

DATED, SIGNED, AND DELIVERED AT NAKURU IN OPEN COURT THIS 13th DAY OF May 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Janet

Prosecution counsel: Konga

Defence Counsel: N/A

1st Accused: Present

2nd Accused: Absent

3rd Accused: Present



4th Accused: Present

5th Accused: Absent

6th Accused: Present

7th Accused: Absent

8th Accused: Present

9th Accused: Present

10th Accused: Present

11th Accused: Present

