



**Republic v Ombasa & 7 others (Criminal Case E911 of 2025)  
[2025] KEMC 154 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEMC 154 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL CASE E911 OF 2025  
PA NDEGE, SPM  
JUNE 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOSHUA KIPIEGO OMBASA ..... 1<sup>ST</sup> ACCUSED  
GEORGE WAKAHIO ..... 2<sup>ND</sup> ACCUSED  
JOHN MWANGI MUGO ..... 3<sup>RD</sup> ACCUSED  
JOHN PAUL OUMA ..... 4<sup>TH</sup> ACCUSED  
DANIEL OWITI ..... 5<sup>TH</sup> ACCUSED  
ELKANA OTIENO ..... 6<sup>TH</sup> ACCUSED  
COLLINCE OCHIENG OBUDHO ..... 7<sup>TH</sup> ACCUSED  
JOSEPH OWINO ..... 8<sup>TH</sup> ACCUSED**

**RULING**

1. It is alleged herein that the accused herein were on 30th April of 2025 at around 2200hrs at Sarova Area in Lake Nakuru National Park, Nakuru West sub-County within Nakuru County at GPS coordinates 37M 0177043UTM 9959859, were found jointly with others not before court, to have entered into a protected area without a permit from the Director General, Kenya Wildlife Service and were also found undertaking an extractive activity which is fishing and while in possession of 40 pieces of fishing nets, 2 wooden fishing boats, 5 wooden peddles, several filled sacks with fish totaling to 740 kgs with a street value of around Kshs 445,000 each @ Kshs 600 per kilogram without a permit from the Director General, Kenya Wildlife Service.



2. Accused numbers 1, 2, 4, 5, and 7 were at the time of plea out on police cash bails. They however absconded and warrants of arrest were issued against them. The 3<sup>rd</sup>, 6<sup>th</sup> and 8<sup>th</sup> accused persons were therefore the only ones who were present during the plea on 02/05/2025. The 3<sup>rd</sup> accused person pleaded guilty to the charges and has accordingly been sentenced.
3. The 6<sup>th</sup> and 8<sup>th</sup> accused persons however denied the offences and were ordered that they may be released upon executing a bond of Kshs400,000/- with a surety of a similar amount. The accused are, however, now requesting for a cash bail alternative. The court called for pre-bail report which has concluded that the sixth accused is a 39-year-old man with no record of a previous conviction and has not been previously subjected to bail/ bond while the eighth accused is a 30-year-old man with, also with no previous conviction and has not been previously subjected to bail/ bond. That the sixth accused hails from a family that has no criminal history and the family relationship is cordial and helpful towards one another. Moreover, the sixth accused is school dropout from Masinde Muliro University from a course in mechanical engineering due to financial difficulties and has also worked for Olkaria, worked also as a fisherman and as a casual laborer in hospitality upto the time of his arrest. That the eighth accused hails from a family that is currently going through financial struggles since he did not continue with his education even after finishing class eight and since they also earn a modest income from casual labor.
4. Learned prosecution's counsel, Mr. Moses Macharia, had no objection to the reports' recommendations. He however argued that the proposal given for a cash bail amount was too low due to the nature of the offences committed and the penalty prescribed for them.
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.
6. At the same time, the Criminal Procedure Code grants courts the discretion to admit an accused person to bail or release them upon executing a bond, often with sureties, ensuring their appearance in court. This provision serves as a safeguard against unnecessary pretrial detention while balancing the need to secure the accused's presence during proceedings. The determination of bail amount is guided by the principle of fairness and proportionality, requiring courts to assess various factors such as the nature of the alleged offence, the accused's background, potential flight risk, and public interest considerations. Importantly, the Code explicitly prohibits excessive bail, reinforcing the constitutional right to reasonable conditions for release, preventing punitive or restrictive measures that could undermine access to justice. Thus, bail is a legal mechanism designed to protect individual liberties while maintaining the integrity of judicial proceedings.
7. In the case of Republic v Robert Zippor Nzilu, Criminal Case No. 4 of 2018, it was held that 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. So, when deciding whether to grant bail, the court must balance two things: the rights of the accused person and the interests of society. On one hand, a person who has been accused of a crime should not be punished before the court has determined if he is guilty. On the other hand, the court must consider whether releasing him might pose a risk, such as fleeing or interfering with the case. Justice is founded on the fundamental principle that no one should be punished before a fair trial determines his guilt. Imprisoning a person before judgment contradicts the essence of fairness and due process. Pretrial detention threatens the integrity of justice, stripping individuals of their liberty without a legal verdict. To confine someone without a final ruling is to risk oppressive practices that undermine the presumption of innocence. Ultimately, premature incarceration weakens the core principles of lawful fairness, casting doubt on the legitimacy of judicial proceedings.



8. Bail or bond conditions must ensure that they are fair and appropriate to both the nature of the offence and the personal circumstances of the accused. This means that conditions should not be excessively strict or punitive, as bail is not a form of punishment but a legal mechanism to guarantee the accused's appearance in court for trial. The court must look at the specific facts of each case, including whether the accused is a flight risk, has strong community ties, or has previous instances of failing to attend court. In *Andrew Young Otieno v Republic* (2017) eKLR, the court emphasized that bond terms should primarily serve the purpose of ensuring the accused appears for trial and should not be so burdensome that they effectively deny the accused their constitutional right to bail. This principle upholds fairness by ensuring that bail conditions are based on reasonableness rather than restricting access to justice. Judges must evaluate each accused person's financial capacity, social background, and other relevant factors when deciding bond terms, ensuring the legal process remains balanced and just.

### **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 having good community ties, they are family men, I do find it safer to grant each accused a cash bail alternative of Kshs. 100,000/-, but will maintain the surety bond as imposed.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 24<sup>TH</sup> DAY OF JUNE, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Janet.....Court assistant/ interpreter

Macharia.....present for DPP

Ndungu present for the accused 6/8.

6<sup>th</sup> Accused person – Present

8<sup>th</sup> Accused - Present

