



**Republic v Wambui (Criminal Case 2410 of 2022)
[2026] KEMC 10 (KLR) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEMC 10 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE 2410 OF 2022
PA NDEGE, SPM
FEBRUARY 10, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER KIOKO WAMBUI ACCUSED

JUDGMENT

1. The accused herein has been charged with the offences of preparation to commit a felony contrary to section 308(1) of the Penal Code and being in possession of cannabis contrary to section 4(a)(ii) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act, 2022, in the 2 counts herein. The particulars of the offence in the first count being that on 13.07.2022, at Free Area in Nakuru East sub-County within Nakuru County, he was found while armed with dangerous weapons namely 1 sharp knife in circumstances that indicated he was armed with the intent to commit a felony namely stealing. The particulars in the second count are that on the same day and at the same time and place, he was found in possession of 25 rolls of cannabis with a street value of Kshs. 1,250/- in contravention of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act, 2022 (hereinafter abbreviated as NDPCA).
2. The case proceeded for full hearing where the prosecution called two witnesses and the accused person gave unsworn statement in defence. The prosecution case is that PW1, NO. 259299 PC Kennedy Keya, was on patrol with a colleague from Free Area Police Patrol Base. They found a group of men who upon seeing them, ran away. They were able to follow one of them who had entered one of the plots there. That with the help of the members of the public, they found him while under a bed inside a two-roomed house. They conducted a search on him and were able to find 25 rolls of bhang from one of the pockets in his short trousers, and a kitchen knife. They arrested him and charged him with the



- offence. In cross-examination, PW1, denied that he had any grudge, or that he was coveting the accused person's wife.
3. PW2, NO. 644636 SGT Zachary Onsongo, was with PW1 at the time. His evidence corroborated PW1's in all material aspects. He added that upon taking the accused to the police station, they sent the suspected cannabis to the government chemist for analysis. That the report confirmed that they were indeed cannabis. He produced the report and the knife as PEXH. Nos. 1 and 2, respectively. The cannabis was however not produced independently. They are however attached to the report.
 4. The accused in his defence stated that he was on his way to work when he encountered some youth who were being chased by police officers. That in the process, he met with the police officers herein. That the officers assaulted him because one of them, PW1, had a grudge against him and had coveted his wife. That he was taken to the police station where the cannabis herein was planted on him. That in the process, the officers demanded some bribe from him. That PW1 has coveted his wife and had vowed to make him regret.
 5. I have narrowed down the issue for determination to be whether the case was proved beyond reasonable doubt. I will begin with the offence in the first count. Section 308(1) of the Penal Code provides thus;

Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.
 6. The Court of Appeal in *Manuel Legasiani & 3 others v Republic* [2000] e KLR defined the offence as follows;

The word 'Preparation' is not a term of art. In its ordinary meaning it means "the act or an instance of preparing" or "the process of being prepared". This is the meaning ascribed to the word "Preparation" in the Concise Oxford Dictionary, Eighth Edition. To prove the offence in question some overt act, to show that a felony was about to be committed, has to be shown. Mere possession of a fire-arm not coupled with such an overt act is not an offence under section 308(1) of the Penal Code.
 7. In *P v Murray* (14 Cal. 159) it was held that:

Preparation consists in devising or arranging the means or measures for the commission of the offence; the attempt is the direct movement toward the commission after the preparations are made.
 8. To prove the offence of preparation to commit a felony, there must be an overt act to show that an offence is about to be committed. A departure from this definition is given in the case of *Re. T. Munirathinam Reddi A.I.R 1955 And. Prad. 118* where it was held thus:

The distinction between preparation and attempt may be clear in some cases, but in most of the cases, the dividing line is very thin. Nonetheless, it is a real distinction. The crucial test is whether the last act, if uninterrupted and successful, would constitute a crime. If the accused intended that the natural consequence of his act should result in death but was frustrated only by extraneous circumstances, he would be guilty of an attempt to commit the offence of murder.
 9. In view of the foregoing judicial precedent, it is intrinsic that the prosecution proves the felonious intent on the part of the accused or the preparation to execute a felony. This can be seen from the



circumstances under which the accused was arrested. The phrase ‘dangerous or offensive weapon’ is not defined in Section 308 of the Penal Code or in Section 4 – the interpretation section of the Penal Code. Section 89(1) of the Penal Code creates the offence of possession of a firearm or other ‘offensive weapon’ etc. and Section 89(4) of the Penal Code defines ‘offensive weapon’ for purposes of section 89 as meaning: ‘any article made or adapted for use for causing injury to the person or intended by the person having it in his possession or under his control for such use’.

10. In *Mwaura and Others v Republic* [1973] EA 373 the High Court in dealing with the question whether a panga, an iron bar, a wheel spanner, a king shaft, screw driver, a stone and a chisel were ‘dangerous or offensive weapon’ for the purposes of the offence of preparation to commit a felony under Section 308 (1) of the Penal Code held at page 375 letter F stated;

In our view “dangerous or offensive weapons” means any articles made or adapted for use for causing injury to the person such as a knuckleduster or revolver or any article intended, by the persons found with them for use in causing injury to the person.

11. It can therefore be argued that, although a kitchen knife is not made for purposes of causing injury to a person, it can suffice to be a dangerous weapon in terms of Section 308 of the Penal Code if the accused in wielding it in the cause of stealing intend to use it for causing injury to any person.
12. The witnesses herein however testified that they saw a group of people who ran upon seeing them. That the accused person herein was amongst them. That they gave chase and recovered the kitchen knife, PEXH. No. 2, herein from him. There is thus no proof that the accused had overtly displayed his intention to commit the crime of theft or stealing as charged herein.
13. In the case of *Maina and 3 others v Republic* (1986) KLR 301 the Court of Appeal dealt with a similar case and held that the prosecution must adduce evidence which proximates the possession of the dangerous weapon with the commission of a felony which can be discerned from the evidence.
14. In the above premises, the accused person cannot be said to have intended to commit a felony as there is no evidence adduced which proximates the possession of the kitchen knife herein with the commission of a felony. Thus intention cannot be discerned from the evidence herein. What if the accused intended to use the kitchen knife for its intended use, that is preparation of food and not necessary to harm or threaten anyone? I am not therefore satisfied that the kitchen knife herein which the accused herein is alleged to have been found with was intended to be used to commit a felony. A key ingredient of the offence in the first count has therefore not been proved to the required standard.
15. In regard to the second count, the prosecution was supposed to prove that the accused was found in possession of PEXH. NO. 1, and whether the same is cannabis within the meaning of section 2 of NDPCA.
16. Cannabis is defined by section 2 of the NDPCA. Section 2 of the NDPCA provides as follows:

‘cannabis’ means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by tops) from which the resin has not been extracted, by whatever name they may be designated

17. Not all parts of the cannabis plant have been illegalised by the NDPCA. The definition of cannabis in section 2 of the act is clearly restrictive in nature and when read alongside the provisions of sections 3(2)(a) of the same Act and the firsts schedule thereof, restricts the applicability of the provisions to the ‘flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by tops) from which the resin has not been extracted’. The evidence laid by the prosecution does



not therefore excludes the seeds and leaves. The prosecution has thus failed to prove to the required standard of beyond reasonable doubt that the plant material herein was cannabis as defined by the provisions of section 2 of NDPCA.

18. There was therefore need for the government analyst to clarify which part of the cannabis plant the said plant materials are alleged to have come from given that it could have as well come from the seeds or roots or even stem of the cannabis plant thereby rendering them not illegal. I thus do hereby enter a finding on not guilty in both counts herein. The evidence of a grudge and that the exhibits herein could have been planted on him cannot therefore be completely overruled.

Disposal Orders

19. Pursuant to the provisions of section 215 of the Criminal Procedure Code, I do hereby acquit the accused herein of the offences of of preparation to commit a felony contrary to section 308(1) of the Penal Code and being in possession of cannabis contrary to section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act, 2022. He should therefore be released from remand custody forthwith unless otherwise lawfully held..

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 10TH DAY OF FEBRUARY, 2026

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court clerk/ interpreter: Wanyoike

Court prosecutor: Macharia

Accused: Present

