



Republic v Gachiku & 14 others (Criminal Application E307 of 2024) [2025] KECA 1113 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KECA 1113 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E307 OF 2024
PO KIAGE, LA ACHODE & JM NGUGI, JJA
JUNE 20, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

- CI PETER MUTHEE GACHIKU 1ST RESPONDENT**
- IP JAMES KIBOSEK TANKI 2ND RESPONDENT**
- CPL JOSEPH KAMAU MBUGUA 3RD RESPONDENT**
- CPL DAVID CHEPCHIENG KIPSOI 4TH RESPONDENT**
- CPL JOSEPH MWENDA MBAYA 5TH RESPONDENT**
- CPL/DRV JOHN MWANGI KAMAU 6TH RESPONDENT**
- CPL HILLARY LIMO KIPCHUMBA 7TH RESPONDENT**
- PC STEPHEN LUSENO MATUNDA 8TH RESPONDENT**
- PC SIMON MUHUGA GIKONYO 9TH RESPONDENT**
- PC SIMON NJOGU MURIITHI 10TH RESPONDENT**
- PC/DRV BONIFACE OTIENO MTULLA 11TH RESPONDENT**
- PC ELIKANA NJERU MUGENDI 12TH RESPONDENT**
- PC FREDRICK THUKU KAMAU 13TH RESPONDENT**
- JOHN WANJIKU MACHARIA 14TH RESPONDENT**
- WARDEN MICHAEL KIPLANGAT BETT 15TH RESPONDENT**

(An application for stay of execution of the decision of the High Court of Kenya at Kiambu (D. O. Chepkwony, J.) dated 27th November, 2024 in Criminal Appeal No. E107 of 2023)



RULING

1. By our ruling delivered on 5th March 2025, we dismissed the applicant's application but reserved our reasons. These are they.
2. By motion dated 5th December 2024, brought under Rule 5(2)(a) of this Court's Rules, the applicant sought for orders that;
 - “2. This Honourable Court does issue an order staying the execution of the decision of the High Court of Kenya at Kiambu (Hon. D. O. Chepkwony, J.) in Republic v. CI Peter Muthee Gachiku & 14 Others (Kiambu High Court Criminal Appeal No. E107 of 2023), hereinafter, the impugned decision of the Superior Court, delivered on 27th November 2024, and or the order emanating therefrom, pending inter partes hearing and determination of the instant application, and of the intended appeal.
 3. More particularly, this Honourable Court does issue an order staying the release of each of the respondents on bail on the basis of the impugned decision of the Superior Court, pending inter partes hearing and determination of the instant application, and of the intended appeal.
 3. This Honourable Court be pleased to issue any other and/or further order as may be necessary to meet the ends of justice.”
3. The grounds on the face of the motion stated that, the subject appeal was not only arguable but had overwhelming chances of success; none of the respondents would suffer any prejudice if the subject revision application and/or order emanating therefrom were stayed pending the hearing and determination of the instant application and/or intended appeal and, there was a real threat that the respondents would interfere with witnesses if released on bond which situation would occasion a miscarriage of justice with respect to the pending criminal proceedings against the respondents. Further, releasing the respondents on bond would render the applicant's intended appeal nugatory should the impugned decision and/or the order emanating therefrom not be stayed and, it was in the interest of administration of the criminal justice and public interest that the application be allowed.
4. The application was supported by the affidavit of Michael Sang, an Acting Deputy Director of Public Prosecutions in the Office of the Director of Public of Prosecutions, sworn on 6th December 2024. It was averred that the two courts below failed to consider the compelling reasons that the prosecution submitted in justifying why the respondents should have been denied bail. The reasons were that, the charges against each of the respondents are extremely serious in nature with potentially severe penalties in the event of conviction thus a high incentive for each of the respondents to abscond; each of the respondents had received specialized training by virtue of their employment and are skilled in the use of firearms, surveillance as well as intelligence collection and counter intelligence, and wielded influence by virtue of the positions they held and thus there existed a real apprehension that they are capable, in self- preservation, of employing the said skills and influence and/or interfere with the investigations and/or criminal proceedings against them to the detriment of the administration of justice. Moreover, as some of the potential witnesses are persons well known to the respondents, including some who are their former colleagues, there was a real risk of witness interference, there



having been information of meetings held between the respondents and some sympathetic colleagues in a bid to derail investigations.

5. During the hearing, Mr. Victor Owiti, learned Principal Prosecution Counsel appeared for the applicant while learned counsel Mr. Mwale appeared with Mr. Wandugi for the 2nd respondents. Learned counsel Mr. Mwale, Ms. Bietta and Mr. Joel Isoe appeared for the 3rd to 13th respondents, while Ms. Awino, holding brief for Mr. Ogola appeared for the 14th respondent. Learned counsel Mr. Wandugi appeared for the 15th respondent.
6. Before parties could highlight their written submissions which they had filed prior, we engaged Mr. Owiti for the applicant on a number of issues. We questioned him on what exactly he sought to stay by his application, considering that the High Court merely dismissed the appeal, which is a negative order incapable of being stayed. Further, in view of the fact that the determination of whether the reasons that are submitted to justify denial of bail/bond are compelling is at the discretion of the court, we inquired from counsel whether in his opinion the two courts below abused their discretion, in finding that there were no compelling reasons for denying the respondents bail, to the extent that this Court should interfere. We probed counsel on how he could evade the fact that there were two concurrent findings on the issue of whether or not there are compelling reasons. Additionally, whether any affidavit(s) had been sworn to show that as skilled marksmen, the respondents had or were already deploying those skills with a fatal effect in any particular instance.
7. In answer, Mr. Owiti submitted that when granting bail, the only discretion that the court has is the setting of the terms and conditions of the bail. He argued that whenever a compelling reason is found or established, the court must decline bail, it cannot exercise discretion. Counsel asserted that if the question of bail is not discretionary, then it becomes a legal question, and, therefore, the prosecution was right to come before this Court. We pointed out to Mr. Owiti that even if that were the case, two courts having made a factual determination of the matter by applying the law, that determination would have to be demonstrably perverse for us to depart from it. After putting up a spirited fight, counsel eventually conceded, and properly so, that this Court cannot interfere with the concurrent findings of fact by the two courts below, absent a determination that they did not exercise their discretion judicially or in a judicious manner and in this case, there was no such indication.
8. We then enquired of Mr. Owiti, what he was going to do with his application. Counsel candidly, if carefully, urged that despite the concessions he had made, we should go ahead and write a ruling if only for purposes of guiding the Office of the Director of Public of Prosecutions for future matters. Following that lengthy engagement and the eventual concession by the applicant's counsel, it would have been superfluous for the respondents' counsel to address us and we informed them as such. Ultimately and inevitably, as already adverted to, we were not convinced that the two courts below erred in any way in finding that there were no compelling reasons for denying the respondents release on bail/bond and an appeal therefrom would be unarguable. Consequently, the application for stay of execution was unmerited.
9. It is for these reasons that we dismissed it.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

L. ACHODE



.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

signed

DEPUTY REGISTRAR

