



**Muchui & another v Republic (Criminal Miscellaneous Application  
E072 of 2024) [2025] KEHC 7725 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7725 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL MISCELLANEOUS APPLICATION E072 OF 2024**

**HM NYAGA, J**

**MAY 29, 2025**

**BETWEEN**

**PATRICK MUCHUI ..... 1<sup>ST</sup> APPLICANT**

**ANDREW MUTHAURA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an Application dated 28<sup>th</sup> November 2025, the Applicants have sought the following orders:-
  - I. That this application is certified urgent.
  - II. That this Honourable court be pleased to review, set aside and/or vary the bond terms issued by the Meru Chief Magistrate's Court in Meru Criminal Case No. E1538 of 2024. Republic Versus Patrick Muchui and Another.
  - III. That pending the hearing and determination of this application, all the proceedings in Meru Criminal Case No. E1538 of 2024, Republic Versus Patrick Muchui and Another be stayed.
  - Iv That an order in the nature of revision do issue calling for the record and examination of the proceedings of Meru Criminal Case No. E1538 of 2024; Republic v Patrick Muchui and Another for purposes of this court satisfying itself as to the correctness, legality or propriety and regularity of the said proceedings.
  - v That an order directing that Meru Criminal Case No. E1538 of 2024; Republic Versus Patrick Muchui and Another be heard by a magistrate other than Honourable S. Ndegwa.
  - VI. That this Honourable court be pleased to dispense with the suspect's/Applicant's physical attendance during the hearing of this application.



- VII. In the alternative and without prejudice to the foregoing, the in charge Meru Main Prison, or wherever else the Applicant will be at the time of hearing, be ordered to facilitate the virtual attendance of the accused during the hearing of this matter.
2. The brief facts of the matter is that the Applicants were charged in criminal case No. E1538 of 2024 with the following offences;
- Count 1.
- Dealing in wildlife trophy of endangered species contrary to Section 108 of the *Wildlife Conservation and Management Act*, 2013. The particulars of the said charge are that on 24<sup>th</sup> October, 2024 at around 12.00 hours at Kathungu area along Isiolo-Ruiru Road at GPS Co-ordinates 37N 0350262 UTM 0017711, in Buuri East Sub-county, they were jointly found dealing in trophies of endangered wildlife species namely Fifteen (15) pieces of elephant tusks weighing 37.85 kilograms with a street value of Kshs. 2,000,000/- (Two Million Shillings) and selling the same for a potential buyer, that being trophy of endangered species, without a permit or other lawful exemption granted under the act.
- Count 2.
- Possession of trophies of endangered wildlife species without a permit or other lawful exemption, contrary to Section 92(4) as read with Section 105 of the said Act. The particulars of this charge are that on the same date, place and time, the accused person were found in possession of fifteen (15) pieces of elephant tusks weighing 37.85 kilograms with a steal, value of Ksh. 2,000,000/- (two million Kenya Shillings) and selling the same for a potential buyer. That being trophy of endangered species, without a permit and other lawful exemption under the Act.
3. The Applicants denied the charges and were granted a bond of Kshs. 2,000,000/- with a surety of similar amount.
4. The lower court record shows that the Applicants approached the trial court, seeking a review of the said bond terms, but the request was rejected. The trial magistrate stated that she had considered the nature of the case and the stated street value of the elephant tusks.
5. When the counsel for the Applicants appeared before this court, he argued that the Applicants had been unable to raise the bond terms.
6. Parties were directed to file their respective submissions, but at the time of writing their ruling, none had done so.
7. The Applicant has moved the court under several provisions of the law. The applicable provision is Section 123(3) of the *Criminal Procedure Code* which provides as follows:-
- ‘The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.’
8. Article 49(i) (h) of *the Constitution* provides that an arrested person has the right :-
- (h) to be released on bond or bail, on reasonable conditions, pending a charge at a trial, unless there are compelling reasons not to be released.
9. In the instant case, the Applicants feel that the bond terms were manifestly high and illegal, bearing in mind the nature of the offence and the value of the wildlife trophy in question. They argued that the bond terms set by the trial court are tantamount to a denial of bond, a violation of their rights to bond and to liberty. The applicants proposed a bond of Kshs. 200,000/- each.



10. The question is, can the bond terms set by the court be said to be manifestly high or unreasonable so as to warrant the orders sought?

11. In *Solomon Macharia Mungai v Republic* [2024] KEHC 10967 KLR, the court (Justice R. Nyakundi) held as follows in regard to the powers of the court to revise bond terms set by the trial court;

‘In deciding whether or not to review a trial court’s decision on bail in terms of section 123 (3) of the *Criminal Procedure Code*, the High Court, as in all exercise of power of appellate interference with the discretion of a trial court, must be satisfied that the decision of the trial court is plainly wrong or, has misdirected itself in failing to take into account a material factor or taking into account an immaterial factor and it has resulted in a miscarriage of justice, as expressed by the Court of Appeal for East Africa in the context of a civil case of *Mbogo v Shah* [1968] EA 93 as follows:

“ A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been injustice”.

12. The same issue was addressed by the Court (Justice F. Muchemi) in *Onjiko v Republic* [2024] KEHC 9003 (KLR) where it was held that;

Section 123 of the *Criminal Procedure Code* gives the High Court jurisdiction to review a trial court’s decision on bail conditions. In considering whether to review a trial court’s decision on bail/bond in terms of the said provision, the court as in all exercise of power of appellate interference with the discretion of the trial court, must be satisfied that the decision of the trial court is plainly wrong or, has misdirected itself in failing to take into account a material factor or taking into account an immaterial factor and it has resulted in a miscarriage of justice. Section 123 (2) of 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. The applicant in this case has been charged with two counts of obtaining money by false pretence contrary to Section 313 of the *Penal Code* and conspiracy to defraud contrary to Section 317 of the *Penal Code*. The applicant is charged with offences of misdemeanours and each carries a maximum sentence of three years imprisonment. In this regard and in keeping in mind the fact that the object of bail is to secure the attendance of the accused to court, it is my considered view that the bail/bond terms are excessive. It is noted that the bond of KShs 5 million with two sureties of similar amount which was also excessive was reviewed to cash bail of KSh.2,000,000/=.

In my considered view, that the cash bail sum of KSh.2,000,000/= may not be affordable to most ordinary families in this country. As such, I am in agreement that the current bail terms are indeed excessive and that this court has a sound basis of interfering with the orders of the honourable magistrate. It is also important to note that amount allegedly obtained by false pretences was KSh.5,600,000/= which is quite a substantial amount. The court is obligated to balance the rights of the accused to bail as well as the right of the complainant as well as the impact of the offence in society. Obtaining by false pretences is prevalent in this country since a decade ago. Courts must be responsive to the needs and concerns of society at large as they sentence convicts in various criminal offences.

13. In *Cyril Kiptoo Serem v Republic* [2020] eKLR, the court (Justice E. Murithi) had this to state on the question of the bond terms set by the court;

“The amount of bail or bond is not supposed to be an approximation of the value of the subject matter of the criminal charge. It does not follow that the higher the value of the property subject of the trial the higher the bail bond terms. It is with respect faulty



reasoning because, were it so, those poor offenders on charges, for example, of destruction or attempted fraudulent obtaining, of property of high value would never secure hefty bail and bond terms imposed. Terms of bond are not meant to punish the accused for any perceived guilt for the charges leveled against him. Nor are the terms meant to ensure he is detained awaiting trial to avoid his escape or to ensure punishment. Terms of bail or bond should be tailored to secure and ensure the attendance in court of the accused for purpose of his trial. If the case meets the criteria for grant of bail in that there are no compelling reasons to deny bail, then the conditions for bail must be such as the accused in the particular case is able to meet. So that grant of bail is not a backdoor denial of liberty contrary to, and in mockery of, Article 49 (1) (h) of the Constitution. The accused is innocent until proved guilty and he is entitled to the Article 25 fair trial protections afforded an accused under *the Constitution*.”

14. Having considered the matter, and in light of the above authorities, I concur with the counsel for the Applicants that the bond terms set are tantamount to a denial of bond. As has been reiterated over and over, the purpose of bond is to ensure that an accused person attends court, not to punish him before the case against him is proved to the requisite standard in law.
15. That said, the court is keenly aware of the nature of the offence and the effects it has on the country’s efforts to conserve its wildlife.
16. Considering all factors, I review the bond terms to Kshs. 1,000,000/- for each Applicant, with a surety of similar amount.
17. In the event they cannot raise one surety, each Applicant may avail one other surety so that their aggregate meets the set bond terms.
18. The lower court record is hereby entered for further proceedings in the lower court.
19. The Applicants to be presented before the trial court on the next date set in that court and if no date is set, on 4<sup>th</sup> June, 2025.

**DATED, SIGNED AND DELIVERED IN MERU THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**H. M. NYAGA**

**JUDGE**

