



**John & 2 others v Republic (Miscellaneous Criminal Application
E021 of 2024) [2025] KEHC 11776 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2024**

CM KARIUKI, J

JULY 31, 2025

BETWEEN

KENNEDY MAWIRA JOHN 1ST APPLICANT

DENNIS MWANGI MWAI 2ND APPLICANT

HENRY MWAKI MBURUGU 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application dated 11/10/2024 seeks review of the trial court Ruling/Order in which they were denied bail/bond pending trial. The application is backed by the grounds on the face of applications ranging to 8 grounds. Their core complaints are that bail/bond being a constitutional right under Article 49 (i) (h) *Constitution of Kenya, 2010*. They were to be released on bail/bond pending trial.
2. Their reasons for the complaints are that they have fixed place of abode, they are not flight risk and are willing to surrender their documents and will not interfere with witness.
3. They cite the case of Republic vrs Mayende 2013 e KLR where court held that the purpose of the bond is to release accused attendance to court for trial. It is not a punishment. Also, scoke of Kenya case Republic Ngunya & Another (2020) eKLR where court stated that bail should not be denied as a form of anticipatory punishment and the presumption of innocence must be upheld until proven otherwise.
4. The trial magistrate court in her Ruling dated 6/8/2024 relied on the antecedent of the previous records of applicants to deny bail/ band.
5. I have perused the pre-bail reports filed for each of the 3 applicants, and I find some as follows: -



1st Applicant Record as follows: -

Kajiado – E679/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure code.)Thika – E2048/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code)Baricho – E909/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)Nanyuki – E 833/2022 (Sentenced to 2 years imprisonment on 14/11/2023).Milimani – E677/2019 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)Wanguru – E120/2022 (Withdrawn under Section 87(a) of the Criminal Procedure Code).

2nd Applicant Record as follows: -

Kajiado – E679/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)Baricho – E909/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure code.)Nanyuki – E833/2022 (Sentenced to 2 years imprisonment and completed on 14/11/2023.)Wanguru – E120/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)

3rd Applicant Record as follows: -

Kajiado – E679/2022 (With under Section 87 (a) of the Criminal Procedure Code.)Thika – E 2048/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)Baricho – E909/2022 (Withdrawn under Section 87 (a) of the Criminal Procedure Code.)Nanyuki – E833/2022 (Sentenced to 2 years imprisonment and completed on 14/11/2023.)

6. Antecedents are good grounds for denial of bond/bail. The Applicants in these applications have not denied the record and the averment. Those reports were negative in terms of recommendations on grant of the bond/bail.
7. Not forgetting that the Applicants are facing capital offence despite all the said antecedents. Under Judiciary Bail Policies, Character and antecedents of the accused person, do not by themselves form the basis for denial of bail or bond, they may justify the refusal of bail or bond if they are coupled with other adverse factors. Combining the antecedents, there is the element of the nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
8. Where the charge against the accused person is serious, and the punishment heavy, the courts assume that there are more probabilities and incentives for the accused person to abscond, whereas in case of minor offences there may be no such incentives.
9. The applicants are facing charges of robbery case (Robbery with violence contrary to s 296 (2) of the penal code cap 63 of LOK which is a capital offence. The foregoing factors do not favour applicants in the circumstances to earn a favour of granting bond/bail thus the court makes the orders.
 - I. The court declines to review trial magistrates ruling denying accused bond/bail.
 - II. Orders accordingly.

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS 31ST JULY 2025.

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CHARLES KARIUKI

JUDGE

