

# 418/17 Shanzu – Republic vs. Falah Manzu Yusuf and 5 Others 1004 kg Ivory

## Today's Court Update

May 29th, 2024 (Judgement): There was no judgement for the third time. Since the last sitting of this matter, the presiding magistrate, Senior Principal Magistrate Joe Mkutu Omido has successfully attained the appointment as a Judge of the High Court. This matter is now “on notice”, meaning that involved and interested parties will be notified when the judgement will be given.

As a point of interest, the three magistrates that have handled this case have all been promoted to the High Court.



*The 6 accused front to rear: Yusuf, Jumba, Marakumi, Kimeu, Omondi and Njagi.*

POLICE  
O.E. NO. 34/24/4/2017

THE KENYA POLICE  
CHARGE SHEET

POLICE CASE FILE NO. 100000  
DATE OF CHARGE 24/7/2017  
COUNTY FILE NO. 100000

Christian Name in Full or Name	Surname or Father's Name	Identity Certificate No. (K.D. No. 12/01/11/12/12/000)	Sex	Place of Birth	Nationality of Tribe	Age	Apparatus No.
1. FALAH MANZU Alias MOHAMED FAKI	YUSUF						
2. GUYLORO AMAHENO (alias LORDA)	JUMBA						
3. JUSTUS WESONGA	MARAKUMI						
4. CYRUS NDOLO	KIMELI						
5. JAMES ORIECH Alias ORO	OMONDI						
6. JAMES KINYUA	NIAGI						

CHARGE EXPORTING RESTRICTED GOODS CONTRARY TO SECTION 200(1) OF THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT 2004.

PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)  
1. FALAH MANZU YUSUF Alias MOHAMED FAKI, 2. GUYLORO AMAHENO (JUMBA alias LORDA), 3. JUSTUS WESONGA MARAKUMI Alias MWALIMU, 4. CYRUS NDOLO KIMELI, 5. JAMES ORIECH OMONDI and 6. JAMES KINYUA NIAGI: On diverse dates between 21<sup>st</sup> January 2014 and 29<sup>th</sup> January 2014 at Mombasa port jointly with other not before court exported restricted goods to wit 106 pieces of Ivory valued at Ksh. 180 million (one hundred and eighty million) in 1x20 container number CMALU 1121948 to SINGAPORE in a bill of lading Number KE324100 purporting to be 200 bags of Robusta coffee on board M/V BRAVO SHIP.

OFFICE OF THE DIRECTOR  
OF PUBLIC PROSECUTIONS  
23 JUL 2019  
SHANZU LAW COURTS

COUNTY CRIMINAL INVESTIGATION OFFICER  
MOMBASA COUNTY  
P. O. Box 90235 - 80100  
MOMBASA

# Court Updates

Presiding Magistrate: Hon. Joe Omido – Senior Principal Magistrate

State Counsel: Mr. Anthony Muskoya

Previous Presiding Magistrates:

- Chief Magistrate Florence Macharia
  - Senior Principal Magistrate Diane Mochache
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**ACCUSED:**

1. Falah Manzu Yusuf @ Mohamed Faki
2. Gaylord Amaheno Jumba
3. Justus Wesonga Marakumi
4. Cyrus Ndolo Kimeu
5. James Oriech Omondi
6. James Kinyua Njagi

**CHARGED:** Between 21 January 2014 and 29 January 2014, at Mombasa, jointly with others, contravened Section 200 (c)(ii) East Africa Community Customs and Management Act to wit.....exported restricted goods to wit; 106 pieces of ivory valued at KES 180 million in container 1121948 to Singapore purporting to be 200 bags of robusta coffee on MV Bravo Ship.



*This prosecution, in its 6th year, is now before Senior Principal Magistrate Omido in Court 1. He replaces CM Florence Macharia who was recently appointed to the High Court.*

# PROCEEDINGS

**April 30th, 2024 (Judgement):** There was no judgement for the second time as the court of Senior Principal Magistrate Joe M. Omido was not sitting. A notice had been posted that the Hon. Magistrate would be away on official duties until May 22nd inclusive. The case was also absent from the cause list.

Neither the six accused or their advocates had not seen the memo and all were present, including Justus Wesonga, who had been absent for the last two sittings.

A new judgement date has been set for **May 29th, 2024.**

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**March 14th, 2024 (Judgement):** Today's judgement was not handed down due to the absence of the 3rd accused, Justus Wesonga. He was also absent on the last sitting of December 7th. There has been a warrant issued for his arrest. The judgement date has been adjourned to **April 30th.**

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**December 7th, 2023 (Mention):** Today's mention was to again confirm the filing of submissions. There was a question as to whether submissions have been filed by A#3. While he told the court that they have been submitted, the court states they do not have a record of that being done. The second accused, Justus Wesonga, was not present and a warrant has been issued for his arrest. The court has set **March 14th, 2024** as judgment date.

If the judgement is made on March 14th, it will be just two weeks shy of the 10 year anniversary of the seizure in Singapore.

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**November 9th, 2023 (Mention):** Today's mention was to confirm the filing of submissions. The court indicated that they have not yet received the submissions from A#1, Falah Manzu Yusuf, or from A#2, Justus Wesonga. Falah Manzu Yusuf is represented by Jared Magolo, one of the premier criminal lawyers in the Mombasa area. It has now been six months since the final defence witness testified. This is being adjourned for one more month to **December 7th** to confirm filing of submissions.

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**October 9th, 2023 (Mention):** Today the court was not sitting as the magistrate was absent on official duties not specified. To date, only one of the six accused has filed submissions. This matter adjourned for mention on **November 9th** to confirm filing of submissions by the rest of the accused.

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**August 23rd, 2023 (Mention):** The court has confirmed that the proceedings have been typed. It has taken four months to complete. SPM Omido has ordered defense and the prosecution to file written submissions before **October 9th**. Adjourned to that date so a date for judgement can be set.

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**July 18th, 2023 (Mention):** Proceedings have not yet been typed. Adjourned to August 23rd. Magistrate Omido says that he will make sure proceedings will be finished.

A warrant of arrest has been issued for 2nd accused Gaylord Jumba. Only three accused attend today's mention. The 5th accused Oriech has been admitted to Coast general hospital and his medical report was presented to the court by his wife.

The sixth accused Kinyua was absent but was represented by his counsel as the court had allowed him not to attend. The matter has been adjourned to **August 23rd** to set a date for judgement.

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**June 6th, 2023 (Mention):** Today was set to ascertain the status regarding the required past proceedings that are presently being typed.

The typed proceedings have not been completed. The matter is adjourned until **July 18th**.



*The six accused listen to directions from Senior Principal Magistrate J. Omido on the last day of the defence hearing.*

**April 24th, 2023 (Defence Hearing):** Today was the last day of testimony and four of the accused testified in their own defence. Falah Manzu Yusuf testified that he was employed in his father's transportation business. In relation to this specific cargo, he was working on the instructions of a Mr. Ali, who was also a friend of his father. Gaylord Jumba told the court that he worked at the Malaba border as a clearing agent and never actually saw the container in question. He processed the pertinent paperwork for the shipment acting on a phone call from a person who he cannot remember. He was not aware of this investigation until 3 years after the container cleared the border.



James Omondi testified that he also worked as a clearing agent and relating to this particular container was acting on a request from the 4th accused, Cyrus Ndolo. He also assisted the driver with the container once it was in the port.

James Njagi, a KRA officer and the 6th accused, told the court that at the time of the offence he was the head of the Exports Office at Kilindini #5 and one of his responsibilities was the verification of containers. He stated that he cleared the container as there was nothing suspicious in regards to the documentation for this shipment.

On the conclusion of his testimony, the defence closed their case. SP Magistrate Omido has **ordered the entire proceedings to be typed** prior to his making a judgement. The case is adjourned to **June 6th, 2023** for further directions.

**February 22nd, 2023 (Mention):** The case is back in court 1 and that of SPM Omido. SPM Omido has recently transferred to Shanzu from Kwale law courts where he was the head of station. The prosecutor for court 1 is Anthony Muskoya, who has handled much (possibly all) of this prosecution. All accused were present except Njagi who was represented by counsel.

Hon. Omido decided that the case will continue with testimony from the rest of the defence witnesses at which time the entire proceeds will be typed. Adjourned to April 24th for defence hearing.

**February 15th, 2023 (Mention):** This is the first time this case is before PM Shikanda. Advocates are present for Yusuf and Njagi. Only 3 of the accused are present, Yusuf, Kimeu, and Omondi. Warrants of arrest have been issued for Jumba and Wesonga, although both live in Western Kenya and have attended regularly since 2017.

It appears that the file is moving to court 2. This would indicate that a new prosecutor is going to take over.

PM Shikanda through out the question (as a trial balloon?) as to whether this trial could start *de novo*, or from the beginning. At this point, all prosecution witnesses have testified and two defence witnesses.

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**December 13th, 2022 (Hearing):** Defence witnesses were set to testify. It is already known at this point that CM Macharia has been promoted to the High Court. This could have been an opportunity for her to end this case. Regrettably, the court was not sitting today for reasons unknown so this prosecution will be handed over to another Magistrate at a date to be determined. This case will now be extended, possibly up to a year.

**September 15th, 2022 (Hearing):** The second accused Jumba, was absent due to a sickness in the family and Mr. Magolo representing Yusuf was unavailable.

Testimony in Kiswahili was heard from Marakumi and Kimeu. Defence hearing to continue on December 13th.

**May 24th, 2022 (Ruling):** The court session for Court 1 today did not begin until 10:17 hr. All involved in this case waited until 2:45pm to hear that CM Macharia believed that enough evidence had been heard to place the accused on their defence. September 13th has been set for the first day of their defence.

**Notes on court considerations for ruling:**

1. There is no scientific report before the court that the ivory seized in Singapore is actually ivory. The ivory is known to have been previously destroyed by Singapore prior to these proceedings being instigated but there is no documentary evidence as such.

2. No report or affidavit relating to Singapore's authorities involvement with this ivory seizure was forwarded to Kenya investigators and/or made its way to the prosecution file. Also, while photograph's of the container and contents were provided, there was no detail as to date or time or by who?
  3. All of the accused but one were involved in the movement of the container from Uganda to Mombasa Port. There is no direct evidence before the court that the five accused had specific knowledge that the container had ivory.
  4. Evidence surrounding the sealing of the container and how many seals were used, is conflicting. It cannot be ruled out that ivory was added to the container when it reached Mombasa.
  5. While Mpesa money transactions were presented in court as evidence of financial transactions between some of the accused, the payments have not been tied specifically to the container or its contents.
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**April 22nd, 2022 (Mention):**All present and written submissions made. May 24th set for date to make a ruling on whether there is a case to answer (prima facie case).

**April 8th, 2022 (Hearing):** Today's witness was the owner of Summit Cove Ltd, an ex-policeman of 9 years service. It was here that the container was first delivered on January 24th, 2014, for 'holding'. An "inward equipment interchange" document was completed by a previous employee, as a receipt for the container storage. The document "outward equipment interchange", indicating the container was taken from storage, is not available to the court. The witness stated that he gave it to the police. (it has not been produced in evidence).

**April 7th, 2022 (Hearing):** Superintendent James Githinji is today's prosecution witness. He had been seconded to the Kenya Revenue Authority from the DCI from 2010 to 2016 and assisted with this investigation. He first became aware of this particular investigation on March 13th, 2014, when advised by KWS that a container they had been tracking, CMAU 1787960, that has been missing for 3 weeks since crossing from Uganda, was being off-loaded at Changamwe.

The container was eventually located, contents verified as only containing low value baobab and cotton seed. It was believed it had contained ivory but contents removed prior to seizure. Subsequent investigation revealed that the same clearing agent, Patana Enterprises, had released processed another container that was on the high seas. This was container, CMAU 1121948, related to the present charges. The witness advised that they (KRA) advised Singapore authorities who held the container when it arrived in Singapore on March 11th.

Supt. Githinji was on the stand for the remainder of the day until after 4pm. He identified the name of the Singapore consignee, the Uganda consignor, and two different Ugandan coffee companies who were shipping the coffee as per documents. There is evidence of mpesa money transactions between Yusuf and Jumba as well as Yusuf and the lorry driver but there is nothing that connects the payments specifically to the container with ivory. He stated that he did not go to Uganda to interview the shippers or consignor and he did not go to Singapore to conduct any investigation. He has never seen the ivory that is subject of the charge. The photos that were submitted came from Singapore authorities.

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**April 6th, 2022 (Hearing):** Inspector Elvis Charro was the prosecution witness, presently a DCI officer working at the Kilifi office. He was first assigned to the investigation on March 17th, 2017. He assisted with investigations relating to mpesa transactions between the different

accused. There is evidence that Njagi was the one who released the container while it was on customs hold on January 28th. The ship sailed from Mombasa on January 29th and arrived in Singapore on March 11, 2014.

**April 5th, 2022 (Hearing):** This was a scheduled hearing day. However, after a meeting in Magistrate's chambers at 09:00, it was agreed that over the next 3 days the witness number would be reduced to three and the hearing would begin the following day. Adjourned to April 6th.

**December 6th, 2021 (Hearing):** The prosecution requested an adjournment as they had not yet obtained a certificate of destruction. All accused were present and at that time (10:20hr) unrepresented however, all disagreed with the adjournment request. The court did not accept the application. Testimony of the lorry driver (ivory Uganda and in Kiswahili) began testimony at 11:44hr. ( At this point, Magolo had arrived.) Driver stated that he picked up the container from the ICD in Kampala and stopped at Malaba, sleeping on the Kenya side. Justus Wesonga assisted with paper work. When he continued his journey, he was told at Mai Mahiu, the he needed to be in Mombasa by 8:00pm the following night. He was called by different phone numbers while on that journey.

This was followed by an employee of Summit Cove Ltd, who stated that the container question arrived at the SCL on January 24th. The entry document was prepared by Rose who is no longer an employee. There is no document to indicate that the container ever left their compound. One more witness testified, possibly from Transpares Ltd, the company that provided the transport. Testimony was in Kiswahili and comprehension was made more complicated due to construction happening in an adjacent courtroom.

**June 17th, 2022 (Hearing):**

**February 2nd, 2022 (Hearing):**

