



REPUBLIC OF KENYA



**Republic v Muthee (Criminal Case E005 of 2024)  
[2025] KEHC 2076 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2076 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL CASE E005 OF 2024  
AK NDUNG’U, J  
FEBRUARY 12, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN MURIUKI MUTHEE ALIAS MAINA ..... ACCUSED**

**RULING**

1. The Accused person in this case, John Muriuki Muthee alias Maina is charged with murder contrary to sections 203 and 204 of the [Penal Code](#). It is alleged in the information dated 22/07/2024 that on 21/01/2024 at Kalalu village in Umande sub-location Laikipia East Sub-county within Laikipia County murdered Bernard Mwangi Ngetha.
2. The Republic has opposed bail through undated affidavit filed on 26/07/2024 and sworn by PC Wilson Njoroge, one of the investigating officers. The reasons advanced for opposing bail are-
  - i. That he attacked the deceased without provocation by hitting him on the head with a sharp stone.
  - ii. That after his arrest, mental assessment was conducted and he was found to be of abnormal mental status and was admitted at Mathari hospital where he underwent treatment for four months.
  - iii. That his actions prior to his arrest shows that he would be a danger to himself and the community as he is someone who needs to be closely monitored by health professionals.
  - iv. That he has no known place of abode as he was homeless and was known to be sleeping along the shores of river Umande.
  - v. That being a homeless person, he has no known social or economic ties and if he is released, it will be impossible to locate him.



- vi. That he is flight risk since after committing the offence, he tried to run away from the scene of crime.
  - vii. That there are more probabilities and incentives for the accused to abscond as he is charged with the offence of murder.
  - viii. That the prosecution has overwhelming and irrefutable evidence that points to the accused guilt and there is a high probability that the prosecution will secure a conviction thus there is fear if released he may flee from the jurisdiction of this court.
3. In response to the prosecution application opposing bail, the accused in a replying affidavit dated 25/09/2024 averred that bail/bond is a right accorded by *the Constitution* and he is innocent until the contrary is proven. That the averments made in the affidavit opposing bail have not been proven as no evidence has been tendered in court. That he has a fixed place of abode at Umande area which is well known by the locals contrary to the averments that he is homeless and lives alongside the shores of river Umande. That grant of bail will allow him to coordinate with his advocate and prepare for trial comprehensively and grant of bail will not prejudice the prosecution's case since he will not interfere with the witnesses.
  4. The application was canvassed by way of written submissions. The State maintained that the accused is a flight risk since after committing the offence, he attempted to run away and it took the intervention of the members of the public to arrest him. That he was homeless at the time and no evidence has been adduced as to his residence and no evidence as to any family or economic ties. Therefore, there is a reasonable apprehension that should he be released, he will go into hiding thus frustrating the case. That given the nature of the charge and seriousness of the punishment, it can be assumed that there are more incentives for him to abscond. On the strength of the prosecution case, he submitted that the accused will be supplied with committal bundles and he will therefore be fully aware of the weight and strength of the case against him and this can be an incentive to abscond. That his prior character as a person with mental illness may render him a danger to himself and to the society. That he has not availed any evidence of close family or program that is willing to monitor or supervise him.
  5. In rejoinder, the accused's counsel submitted that the accused is entitled to right to bail as prescribed under Article 49(1)(h) of *the Constitution* and section 123A (2) of the *Criminal Procedure Code*. That the allegation that he is danger to himself and the community are unsubstantiated. That the prosecution has not met the evidential burden placed upon them to show why the accused should be denied bail as no evidence has been adduced in support of their application.
  6. I have considered the rival arguments canvassed. None of the parties found it necessary to call for a pre-bail report and therefore the suitability of the Accused accessing bail will purely be determined on the facts from the affidavits filed.
  7. Bail pending trial is a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict, must be reasonable. See Article 49(1) (h) of *the Constitution* of Kenya, 2010 which states that every accused person has a right-
    - “(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
  8. “Compelling reason” is not defined in *the Constitution* or in any law that this court is aware of. The term is also not defined in Black's Law Dictionary, Tenth Edition. However, the term “Compelling need” is defined there as –



9. “A need so great that irreparable harm or injustice would result if not met.”

A note following that definition states –

“Generally, courts decide whether a compelling need is present based on the unique facts of each case.”

10. Compelling reason therefore, in this court’s view, is a reason that must militate against granting the accused bail, such as proven likelihood of him/her not attending court, interference with witnesses, harm to witnesses or to himself/herself, and the like. The important word here is proven. It is not just a matter for the discretion of the court. He who seeks to deny an Accused person his constitutional right to bail pending trial must therefore place evidence before the court as would establish, on balance, the compelling reason urged. It is not enough to merely allege without evidence.

11. The reasons advanced by the prosecution for denial of bail are;

- i. The accused is flight risk.
- ii. The strength of the prosecution’s case.
- iii. Nature of the charge and seriousness of the punishment.
- iv. The safety and protection of the accused.

12. The second reason can be dismissed right away. The perceived strength of the prosecution case in my view is not a compelling reason to deny an accused person his constitutional right to bail. The Accused has a constitutional and legal right to the presumption of innocence until and unless proven guilty to the required standard. In *Oscar Edwin Okimaru v Republic* [2021] eKLR it was stated that;

“To my mind, for this court to base its decision on the weight of the evidence to be adduced against the accused persons at the stage of determination of an application for bail, may well be prejudicial. While the Court is not necessarily barred from taking a dim view of the evidence in setting conditions for the grant of bail, that cannot be the basis for denial of a constitutional right to bail.”

13. The same applies to the third reason. The perceived seriousness of the offence and the sentence in my view can never be a compelling reason to deny an accused person the constitutional right to bail. Though the Judiciary Bond and Bail Policy 2015 lists the seriousness of the offence as a tenet for consideration, the court must not lose sight of the fact that Article 49(1)(h) grants an accused the right to bail irrespective of the seriousness and the nature of the offence. See *R V Mwangi* [2016] eKLR where the court held that: -

“Bail cannot be refused simply because the accused has been charged with a very serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the ground for refusing bail exists.”

14. Being a flight risk or the safety and protection of the accused if proved on a balance, are compelling reasons to deny an accused person bail, one because he/she will not turn up for the trial as and when required, two because he might cause more harm to himself or to the society or the community might cause harm to him.

15. In the present case, have those allegations been proved on balance? The prosecution has stated that the accused has no known fixed abode since he was residing by the shores of river Umande. He has no



known economic or familial ties. That after committing the offence, he tried fleeing the scene of crime and it took the intervention of the public who arrested him. The accused's counsel on the other hand refuted these claims and stated that he has a fixed place of abode in Umande which is well known by locals there. He did not however states whether he has familial ties there or not. He did not offer much for this court to determine that his place of abode is Umande as alleged.

16. As to his safety, it is on record that he suffers from a mental illness. He was treated at Mathari hospital where he was for four months. This court is not aware whether the illness is a recurring one or not. In my opinion, releasing a person with an unstable mental condition to the public by admitting him to bond pending trial would not be in the interest of justice as this might endanger public safety and the safety of the accused person himself.
17. With the result that compelling reasons exist to warrant the curtailment of the Accused's constitutional right to bail. The objection to bail succeeds. The Accused shall be remanded during the pendency of this trial.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF FEBRUARY 2025**

**A.K. NDUNG'U**

**JUDGE**

