



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wambua (Criminal Case E001 of 2025)
[2025] KEHC 3408 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL CASE E001 OF 2025**

**J WAKIAGA, J
MARCH 19, 2025**

BETWEEN

REPUBLIC PROTESTOR

AND

HENRY KYALO WAMBUA ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code the particulars of which are that on the night of 14th and 15th December 2024 at around 0000 hours at Lunga Lunga slums in Viwandani Area in Makadara Sub County within Nairobi County murdered Anne Wanjiku Kiragu
2. He pleaded not guilty and by an affidavit sworn on 3rd march 2025, the prosecution through CPL Erick Ogotu opposed the release of the accused on bond and deposed that the accused and the deceased were living together as husband and wife and were blessed with two children aged four (4) years and eight (8) months respectively .
3. That the couple had a strained and violent relationship and that on the material day while at their local pub, the accused boxed the deceased severally on her face, pushed her on a chair and hit her with a stool on the head and watched her die, before abandoning the eight-month old baby with the body of the deceased at the pub and fled the scene and switched off his mobile phone thereby becoming unreachable by his mother in law.
4. It was deposed that the accused was living in a rental premises with no any other known place of abode hence making him a flight risk. It was contended that there was high likelihood of the accused interfering with witnesses , namely his father in law, mother in law and aunt in law , all who were well known to him in view of the nature of the offence he was facing .



5. The court in compliance with the Bond policy Guidelines, ordered for a pre-bail report , which was filed on the 10th March 2025 in which it was stated that the accused was a first-born son in a family of four children whose parents had separated. He was aged 27 years working as a turn boy for long distance trucks as at the time of his arrest. He was married to the deceased with whom they had two children. He confirmed consuming alcohol and smoking cigarettes.
6. It was stated that the same had an ongoing case of causing grievous harm at Makadara where he is out on cash bail of kshs 50,000 which has honoured to date. It was stated that the local administration at Viwandani did not the accused personally while the assistant Chief and village Elders from his rural home described him as a person of good standing. It was stated that the chief of Utangwa location who is his cousin had confirmed that if released on bond, the same would reside at Kituluku village Mbooni sub county until the matter is concluded .
7. On the victim’s concern it was stated that the victim and accused children were currently under the care of their maternal grand parents , who stated that they were unaware of the accused true identity despite the fact that he had lived with their daughter and fathered children with her. They expressed deep trauma following her death and noted that they were not aware of the domestic violence she endured noting that she might had been too afraid to speak up. They strongly opposed the release of the accused on bond citing the security of the children.

Submissions

8. In response to the application, the accused filed written submissions which Mr Gare Advocate for the accused relied upon , wherein it was contended that the right to bond under Article 49 (1)(h) of *the Constitution* and Section 123A (1) of CPC may only be limited where there are compelling reasons. It was submitted that the only criterion for bail is whether the accused will turn for trial as and when called upon. It was stated that the allegations by the State had not been substantiated and that the fact that the witnesses are related to the accused cannot be a measure of imputing interference as was stated in R v Sifuna [2023] KEHC 22375(KLR).
9. It was submitted that the seriousness of the offence did not negate ‘the presumption of innocence as was stated in the case of Republic v Thomas Muthui Nzili and that the burden of proving compelling reasons was upon the prosecution and that one’s liberty should not be taken for granted as was stated in the case of Republic v Danson Mgunya & Another.
10. Miss Ogwenyo for the Prosecution made oral submission to the effect that the accused was a flight risk having switched off his mobile phone and went to unknown place. She contended that the accused was likely to interfere with witnesses.

Determination.

11. Under Article 49 of *the Constitution*, bond /bail is a constitutional right of every accused person which may only be denied where there exist compelling reasons advanced by the prosecution on a balance of probability despite the fact that the accused faces a criminal trial.
12. What constitute compelling reasons have not been defined by *the constitution* but the judiciary bond policy Guidelines at paragraph 4.9 states that the following shall constitute compelling reasons for the courts consideration :
 - (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty. 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.

- (b) The strength of the prosecution case. an accused person should not be subjected to pretrial detention where the evidence against him or her is tenuous, even if the charge is serious. conversely, it may be justifiable to subject an accused person to pretrial detention where the evidence against the accused person is strong. For example, where all the prosecution witnesses have testified, and the accused person is aware of the strength of the evidence against him as was stated in : *Watoro v republic* (1991) eKLR 220; *republic v Danson Mgunya & another* [2010]eKLR; *Jennifer Atieno Oduol v republic* [2006]eKLR. (c) Character and antecedents of the accused person. although the 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. (d)

The failure of the accused person to observe bail or bond terms on previous occasions is a good ground for denying bail or bond. (e) Likelihood of interfering with witnesses. where there is a likelihood that the accused will interfere with prosecution witnesses if released on bail or bond, he or she may be denied bail or bond. however, bail or bond will only be denied if (i) there is strong evidence of the likelihood of interfering with prosecution witnesses, which is not rebutted, and (ii) the court cannot impose conditions to the bail or bond to prevent such interference. For example, where the accused person has been provided with witness statements, and therefore knows the identities of the prosecution witnesses and the nature of the evidence that these witnesses will adduce at trial, there is a real likelihood that the accused person may contact the witnesses. the likelihood that such an accused person may contact witnesses “could probably inflict genuine fear and anxiety in the potential prosecution witnesses,” and therefore constitutes a compelling reason for the denial of bail. (f) The need to protect the victim or victims of the crime from the accused person. (g) The relationship between the accused person and potential witnesses. See, e.g., *republic v Margaret Nyaguthi Kimeu* [2013] eKLR. *republic v joseph Wambua Mutunga & 3 others* [2010] eKLR. See, e.g., *Republic v Lucy Njeri Waweru & 3 others* [2013] eKLR. (h) Child offenders. where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor. (i) The accused person is a flight risk. where the accused person is a foreigner who does not have a fixed abode or hosts in the country and Kenya does not have an extradition treaty with the accused person’s country, there is a presumption that he or she is a flight risk and may therefore fail to attend trial if granted bail or bond.³⁹ the rationale for this presumption is that it would be impossible to prevail upon such a country to return its national to Kenya to be prosecuted should they abscond after being granted bond or bail.⁴⁰ (j) Whether accused person is gainfully employed. the courts also consider the fact that an accused person is gainfully employed to enhance the likelihood that he or she will attend trial. however, it should not matter whether or not the accused person is a casual labourer or is engaged in permanent and pensionable employment. accordingly, the fact that the accused person is a casual labourer should not, in itself, constitute the basis upon which the court determines whether or not to grant bail.⁴¹ (k) Public order, peace or security. whether the release of an accused person will disturb public order or undermine public peace or security.⁴² Pretrial detention may be necessary to preserve public order where it is demonstrated that the public response to an offence is such that the release of the accused person would be likely to lead to a public disturbance. See, e.g., *Republic v Taiko Kitende Muinya* [2010] eKLR. See, e.g., *Republic v Ahmad Abolafathi Mohamed & another* [2013] eKLR. *ibid.* See, e.g., *Republic v Joseph Wambua Mutunga & 3 others* [2010] eKLR. See, e.g., *Republic v Pascal Ochieng*



Lawrence [2014] eKLR. (l) Protection of the accused person. whether pretrial detention is necessary to protect the accused person.

13. In this cause the prosecution has raised two issues which they consider to be compelling reason , the accused being a flight risk based on the fact that the same allegedly left the scene and switched off his mobile phone and that the accused is likely to interfere with prosecution witnesses .
14. I take the view that the accused having been accused of an offence of this nature was logically not expected to stay at the scene and that the action of the same was reasonably expected and can not unless there are other factors be considered as compelling reason enough to deny the accused bond. The prosecution is further silent on how and when the accused was arrested. The accused has provided an alternative place of abode should he be released on bond which has not been controverted by the prosecution.
15. As regards the other reason of interference with witnesses , the prosecution is silent on the nature of the interference and whether there has been an attempt on the part of the accused to interfere with witnesses as was stated by the court in the case of Republic v Dwight Sagay & 4 others [2013] eKLR where the court quoting the case of Panju v Republic [1973] EA 284 stated that before any one can say that there would be interference with witnesses at least some facts should be led to the court otherwise it is asking the court to speculate .
16. I have further noted that the accused has been out on bond on un-related offence and the prosecution has not contested the fact that he has honoured the said bond terms, thereby confirming that he is a person who is aware of the consequences of failing to honour bond terms.
17. From issues raised herein I find and hold that the prosecution has failed to prove the existence of compelling reasons to enable the court deny the accuse the enjoyment of his right to bond and that those advance by the prosecution can be adequately ring fenced by appropriate bond terms.
18. I therefore order that the accused be released on the following bond/bail terms and conditions pending the hearing and determination of this cause ;
 - a. Bond of Kenya shillings one million (ksh1,000,000) together with one surety of similar amount
 - b. In the alternative cash bail of Kenya shillings five hundred thousand (kshs 500,000) with one surety of similar amount
 - c. Upon his release on bond he shall report to the chief of his rural home forthwith and shall be reporting to the said chief on the last Thursday of each month until the final determination of this cause
 - d. He shall make no contact of whatever nature with any of the prosecution witnesses including but not limited to his parents in law and un-named aunt in law unless the same is done with the authority of and in the presence of the Investigating officer
 - e. The chief shall file a monthly report with the Registrar of this Court every month until the final determination of this cause and or otherwise directed by the court.
19. And it is ordered.

SIGNED DATED AND DELIVERED AT MAKADARA THIS 19th DAY OF MARCH 2025

J.WAKIAGA

JUDGE



In the presence of

