



**Republic v Ogola (Criminal Case E005 of 2025)
[2025] KEHC 10921 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 10921 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E005 OF 2025
JM OMIDO, J
MARCH 12, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL DICKSON OGOLA ACCUSED

RULING

1. Before me is the State’s application under Article 49(1)(h) of the Constitution whereby the order sought is that the Accused person be denied bond at this stage.
2. Under the said Article, the right to bond is not absolute and one can be denied bond if compelling reasons for such denial are presented.
3. The onus to present such compelling reasons lies on the prosecution and the standard of proving that there exist such reasons is on a balance of probabilities.
4. I have considered the Bail Information Report filed herein, the affidavit of Inspector of Police Philip Ripis sworn on 17th February, 2025 opposing bond, whose purport is to present compelling reasons, the submissions by both parties and the record in its entirety.
5. The first ground upon which the application for denial of bond is premised, as presented by Ms. Muema, learned Prosecution Counsel is that the Accused person is a flight risk and may not turn up for trial if released as he has no known fixed place of abode.
6. The second ground is that there is concern that the Accused person is a danger to the community and may breach public peace and security.
7. The third ground is on the Accused person’s safety whereby it is alleged that the community is hostile and his life may be at risk if he is released.



8. Ms. Muema relied on the Bail Information Report, the affidavit of the Investigating Officer and the authority of *Komba v Republic* (Criminal Case E024 of 2023) [2024] KEHC 6971 (KLR) (29 May 2024) (Ruling) in which this Court (A.K. Ndung'u J) laid out some of the grounds which would amount to compelling reasons upon which an Accused person may be denied bond.
9. In response to the application, the Accused person filed two affidavits, one sworn by one Christine Adongo Ochieng' who claims to be the Accused person's spouse, and the other by the Accused person. Both affidavits were sworn on 20th February, 2025.
10. The response by Mr. Lore learned Counsel for the Accused person was that his client has an abode where he has been residing with his spouse for more than two years, and operates a business around his area of residence, which fact he says is confirmed in the Bail Information Report. Counsel further states that the Accused person has a family, as evidenced in his affidavit. He further urges that nothing has been provided to prove that the Accused person is a threat to the community.
11. The Accused person refutes claims that his life could be endangered if he is released.
12. I have considered the record in its entirety and what is clear to me is that the Investigating Officer has presented claims on oath that have been refuted on oath by the Accused person through the two affidavits that he relies on.
13. It is useful to note however, that the Bail Information Report indicates that the Accused person indeed has a known place of abode and a business that he runs in Kondele area in Kisumu. The reason then that he is a flight risk because his place of abode is unknown is not tenable, in the circumstances.
14. That then leaves the prosecution's grounds that the Accused is considered to be a danger to the community and that his safety may not be assured if he is released.
15. I note from the Bail Information report that the Accused person does not have previous criminal records. It is unclear from the report and from the affidavit of the Investigator why he is considered to be a threat to the community. Both documents do not disclose the basis of the fears.
16. As we have already seen, whether or not there are grounds compelling enough to deny an Accused person bond is a matter to be determined on a balance of probabilities.
17. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru J (as he then was) in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526 as follows:

“.....a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”
18. It is to be remembered, as stated above, that the duty or onus lies upon the prosecution to present evidence to prove the existence of compelling reasons. Mere allegations without basis as to their source cannot amount to proof.
19. Moreover, where a party makes an allegation on oath that is denied or disputed on oath, the court, while determining whether such an allegation has been proved on a balance of probabilities or not, must decide the same on the cardinal principal of evidence that is set out under Section 3(4) of the *Evidence Act* which provides that a fact is not proved when it is neither proved nor disproved.



20. On that basis therefore, the allegations that the Accused person may disturb public order made by the State, which is denied by the Accused person is in the circumstances not proved as it is neither proved nor disproved. It is therefore not proved to the required standard.
21. As to the claims that the Accused person may be attended to with a hostile reception, my view is that this court, in the circumstances presented herein, can attach conditions of release to safeguard his security.
22. Having said as much, I am persuaded that the prosecution has not presented grounds that would amount to compelling reasons that would warrant the Accused person to be denied bond.
23. In the result, the Accused person shall be released on a bond of Ksh.800,000/- with one surety of similar amount. In addition thereto, the Accused person shall not visit the area where the offence is alleged to have occurred while this case is pending and shall upon release change his abode and communicate to the Investigating Officer on the location of his new and future residences. In the event he is unable to comply with this condition, he shall remain in custody.
24. Before approval of any surety, the proposed surety shall inform the Deputy Registrar of this court the arrangements that will have been made by the Accused person towards satisfying the condition above concerning the change of his abode and such information as would have been relayed to the Investigating Officer in respect thereof.
25. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 12TH DAY OF MARCH, 2025.

JOE M. OMIDO

JUDGE

Accused: Present.

Prosecution Counsel: Ms. Muema.

Defence Counsel: Mr. Lore.

Court Assistants: Mr. Ngoge & Mr. Juma.

