



**Republic v Marindi & another (Criminal Case E010 of 2025)  
[2025] KEHC 3128 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3128 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E010 OF 2025**

**AC BETT, J  
MARCH 3, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**LUKA MARINDI ..... 1<sup>ST</sup> ACCUSED**

**ISAIAH MARINDI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The prosecution objected to the release of the Accused persons Luka Marindi And Isaiah Marindi on the ground that they have reasons to fear that the Accused persons would interfere with the witnesses if released on bond.
2. The pre-bail reports confirm the prosecution’s fears. The Accused persons are charged with two counts of murder. The prosecution has written a letter to the Witness Protection Agency requesting that the two specified witnesses be vetted in order to ascertain whether they are to be placed under the Witness Protection Programme.
3. On their part, the Accused through his Counsel submitted that the 2<sup>nd</sup> Accused needed treatment for an injury and that in any event, the Accused persons had been arrested in August 2024 and released on bond after which they were arrested again. It was their submission that they have been in custody for one (1) month and they are entitled to bond under Article 49 (1) of *the Constitution*. The Accused further submitted that this court has jurisdiction to have any witnesses placed under witness protection. On the fear expressed in the pre-bail report that the Accused persons are a flight risk, they submitted that they have a fixed abode and are willing to be reporting to the DCI and undertake not to threaten the witnesses.



## Analysis And Determination

4. The right to bail is founded on Article 49 (1) (h) of *the Constitution* which states:-

- “(1) An arrested person has the 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.”

5. It cannot be gainsaid that the right to bond is a right guaranteed under *the Constitution* and can only be denied in the presence of exceptional circumstances.

6. The exceptional circumstances that can guide the court in exercise of its discretion whether or not to grant an accused person bail or bond are set out in Section 123 (A) of the *Criminal Procedure Code* which provides:-

- “(1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
- (a) the nature or seriousness of the offence;
- (b) the character, antecedents, associations and community ties of the accused person;
- (c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
- (d) the strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- (b) should be kept in custody for his own protection.”

7. Whereas the statutes do not define what “compelling reasons” are, the court in the case of Republic v. Pascal Ochieng Lawrence [2014] eKLR stated as follows:-

- “1. It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the State. The court in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:- the seriousness of the offence although this carried greater weight under the old constitutional dispensation; the weight of the evidence so far adduced if the case is partly heard; the possibility of the accused interfering with witnesses; the safety and protection of the accused once he/she is released on



bail/bond;whether the accused will turn up for trial;Whether the release of the accused will jeopardize the security of the community.”

8. In declining to issue bond in Republic v. Elam Wanjala Sifuna [2003] KEHC 22379 (KLR), Mrima J. stated as follows:-

“Further, the High Court in Republic v Joshua Mueke Mutunga & 3 others [2020] eKLR in determining the criteria to be applied on whether to grant bail or bond relied on the decision by the Supreme Court of Nigeria in Alhaji Muiahid Dukubo-Asari v Federal Republic of Nigeria, SC 20AI /2006 which set out a similar criteria on the granting of bail by holding as follows: -“...When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision. These criteria have been well articulated in several decisions of this court. Such criteria include among others, the following: -

- i. The nature of the charges;
- ii. The strength of the evidence which supports the charge;
- iii. The gravity of the punishment in the event of conviction;
- iv. The previous criminal record of the accused, if any;
- v. The probability that the accused may not surrender himself for trial;
- vi. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;
- vii. The likelihood of further charges being brought against the accused;
- viii. The probability of guilty;
- ix. Detention for the protection of the accused;
- x. The necessity to procure medical or social report pending final disposal of the case”. [Emphasis added]

9. Having taken into account the circumstances of the case, I find that the charges facing the Accused persons are serious indeed for they are charged with two counts of murder. The gravity of the charges facing the Accused and the potential penalty if convicted can be held to constitute a compelling reason to abscond. However, the fear of abscondment can be resolved by imposing stringent bond terms.
10. In regard to the fear that the Accused persons may interfere with witnesses, I have gone through the committal bundle and established that two witnesses complained that they had been threatened by the Accused.
11. The fact that the prosecution has taken steps to engage the Witness Protection Agency with a view to having the said witnesses placed under witness protection signifies a valid misapprehension that the safety of the witnesses is under threat.
12. Since the two witnesses whose lives were threatened by the Accused persons are still living in their homes, the court is under duty to protect them in order to safeguard the integrity of the hearing and the rights of the victims.



13. in the case of *Dedan Njeru Njeru v. Republic* [2021] eKLR, the High Court dismissed an application for bond where the witness was said to have been threatened by the Accused and cited the case of *Republic v. Patrick Ntarangwi* [2020] eKLR where the court held:

“In considering the question of bail or bond, the court should balance the right of an accused, pursuant to the presumption of innocence, to be released on bail pending his trial against the public interest of prevention of crime and the right of the victims to access to justice. The right of the victims to access justice no doubt will be gravely affected if the prosecution witnesses are interfered with.”

13. In the premises, I decline to admit the Accused persons to bond at this juncture. The Accused persons shall re-apply for bond once the vulnerable witnesses testify.

14. Those are the orders of the court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF MARCH 2025.**

**A. C. BETT**

**JUDGE**

**In the presence of:**

Ms. Chala for the Prosecution

Mr. Muaka for the Accused persons

Court Assistant: Polycap

