



**Republic v Ngilimo & 2 others (Criminal Case E001 of 2025)  
[2025] KEHC 8020 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 8020 (KLR)

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

**RB NGETICH, J  
APRIL 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ROBERT NGILIMO ..... 1<sup>ST</sup> ACCUSED**

**HILLARY BETT ..... 2<sup>ND</sup> ACCUSED**

**MC DONALD WAFULA ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The three accused persons herein have been jointly charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence being that on the 5<sup>th</sup> Day of February 2025 at about 6:30 pm at Narasha Forest, in Koibatek Sub County within Baringo County, the accused persons jointly, willfully and unlawfully murdered August'ine Kipngetch Rotich.
2. On the 12<sup>th</sup> March,2025, the charge and its full particulars were read over to the accused persons who all denied the charge and a plea of not guilty was entered. The prosecution objected the accused persons being released on bond. The investigations officer filed an affidavit in opposition to bond dated 3<sup>rd</sup> March 2025.He averred that the witnesses' and victim's family area of residence borders Narasha forest which is within the respondents' area of jurisdiction and if released, the respondents are likely to intimidate, threaten or otherwise interfere with the witnesses and for the sake of preservation of evidence, it is prudent and desirable for the respondents' right to bail/bond be suspended until after the family of the deceased testify.
3. He further avers that members of the public are still angry over the deceased's death and if the respondents are released, their safety will be at risk since irate members of the public might attack them as they are baying for their blood.



## Response From Defence Counsel

4. The defence counsel Ms. Nanzuishi submitted that the accused persons are KFS rangers and cannot escape. On allegation of interference with witnesses, she prayed that the accused persons be granted bond with condition not to go to Ndarasha area. She submitted that bond is a right of everyone as provided by [the constitution](#) and the accused persons have been held long enough in custody. She prayed that this court finds the accused persons suitable for bond stating that the period of 1 month and 7 days has calmed down members of the public.

## Rejoinder By State

5. The state counsel Ms. Omari submitted that the issues highlighted by the defence counsel are in the affidavit and that they are opposed to bond and prayed that the accused persons be placed in custody until the witnesses who are residents of Ndarasha forest testify stating they have fears that the accused persons may interfere with the witnesses and they also have information that the ground is hostile and bond can be considered after witnesses have testified. The court called for pre-bail reports to be availed to assist the court in determining the application for bond and report was filed as directed.

## 1<sup>st</sup> Accused pre-bail Report

6. From the report, the 1<sup>st</sup> accused person is aged 33 years. He is married with two children. He joined Kenya Forest Services in the year 2015 and at time of arrest, he had worked at Eldama Ravine Forest Station for the past two years. From Probation and Aftercare risk assessment instrument, the accused is of minimum risk considering his chances of recidivism. The accused's family own plots at Kawalase Location but have no title deeds. However, the family has friends who can stand surety for the 1<sup>st</sup> accused.
7. The 1<sup>st</sup> accused undertakes to obey all the conditions which will be set by this honorable court. He promised to attend court proceedings whenever required and not interfere with the witnesses of this case for justice to prevail. The accused person's family are willing to support him if he is granted bond and ensure that he attends court whenever needed though they say they have no security to deposit in court.
8. The family of the victim is against the 1<sup>st</sup> accused being granted bond; they are still bitter and traumatized for losing their own and the family did not receive any support from the Kenya Forest Services during the treatment and the burial processes of the deceased victim. They stated that for the victim's psychosocial healing, the accused persons should remain in remand until the completion of this case.
9. From the local administration, the accused is not security threat and that he has no criminal record or incidences within his home area and they are not opposed to him being considered for bond. The accused's friend described him as a social and responsible person and he is willing to stand surety for him.
10. The Baringo County Forest Conservator stated that the 1<sup>st</sup> accused was interdicted from services at Kenya Forest Services until conclusion of this matter and that he will not be within Baringo County and his security will not therefore be at risk and is not opposed to the 1<sup>st</sup> accused person being considered for bond.



## 2<sup>nd</sup> Accused pre-bail Report

11. From the report, the 2<sup>nd</sup> accused is aged 27 years. He was employed by Kenya Forest Services as a constable in the year 2023 and stationed at Narasha Forest Station-Eldama-Ravine where he worked until the time of his arrest. According to Probation and Aftercare risk assessment instrument, the accused is of minimum risk considering his chances of recidivism. The accused's family owns two-acre piece of land at Chepseon Location in Kericho County. The 1<sup>st</sup> accused promises to abide by all conditions of bond.
12. The 1<sup>st</sup> accused's family urged this court to consider him for bond. His family members stated that he has been relating well with other family members and they do not consider him a flight risk. They are ready to support him where possible if he is allowed to be attending court from open community setting through provision of moral and financial support.
13. The deceased victim was married with two children who are both dependents as they are four years and ten months old respectively. The widow is a casual laborer.
14. victim's family, local administration and Baringo forest conservator gave similar sentiments as sentiments given in respect to 1<sup>st</sup> accused.

## 3<sup>rd</sup> Accused Pre-bail Report

15. From the report, the 3<sup>rd</sup> accused was recruited as forest officer in the year 2023 and posted to Narasha Forest station in Eldama ravine as first posting station until time of his arrest. He is single and has no children. He has no history of crime.
16. The 3<sup>rd</sup> accused's family members understand the gravity of the offence but state that it was not planned. The 3<sup>rd</sup> accused prays for bond and promises to abide by bond terms if granted the opportunity by the court; he promises to avail himself when required and promises not to interfere with the witnesses.
17. The victim's family, local administration and Baringo forest conservator gave similar sentiments as sentiments given in respect to 1<sup>st</sup> accused.

## Determination

18. Bail is a constitutional right of every citizen. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested person has the right ... to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”
19. Moreover, by dint of Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.
20. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:



- (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 fulfilment 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.
21. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
22. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:
- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
  - (b) The strength of the prosecution case.
  - (c) The character and antecedents of the accused person.
  - (d) The failure of the accused person to observe bail or bond terms.
  - (e) The likelihood of interfering with witnesses.
  - (f) The need to protect the victim or victims of the crime.
  - (g) The relationship between the accused person and the potential witnesses.
  - (h) The best interest of child offenders.
  - (i) The accused person is a flight risk.
  - (j) Whether the accused person is gainfully employed.
  - (k) Public order, peace and security.
  - (l) Protection of the accused persons.
23. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records,



the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.

24. From the views of the local administration, the accused persons are not flight risk. The Baringo county forest conservator confirmed that the 3 accused persons who are forest officers have been interdicted and they will not be in Ndarasha area where the incident occurred. Their homes as per the probation officer's report are far from the area. There is therefore no likelihood of the accused persons interfering with the witnesses neither will their lives be endangered. In view of the above, I see no compelling reasons to deny the accused persons bond.

25. Final Orders: -

Each accused may be released on bond of kshs 500,000 with one surety of a similar amount.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis – Court Assistant.

Ms. Omari for State.

Mr. Alubaka H/B for A1 and A3.

Ms. Kirui H/B for Kipkoech for A2.

