



REPUBLIC OF KENYA



**Republic v Sigat & 4 others (Criminal Case E062 of 2021)
[2025] KEHC 4728 (KLR) (Crim) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E062 OF 2021
MW MUIGAI, J
APRIL 8, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KHALIF ABDULAH I SIGAT 1ST ACCUSED

JAMES MULI KOTI 2ND ACCUSED

JOSEPH ODHIAMBO SIRAWA 3RD ACCUSED

EDWARD KONGO ONCHONGA 4TH ACCUSED

NELSON NKANE 5TH ACCUSED

RULING

Variation of Consent to Report Every 15th of Month to IPOA

1. The accused were charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the information are that :-

On 18th September 2018 at Changamwe Police station in Mombasa County the accused persons murdered Caleb Espino Otieno alias Waigo.
3. The accused pleaded not guilty and have been in custody until 1/11/2022 and subsequent periods when their applications for bail was allowed and the accused complied with bond terms.
4. The trial is yet to commence .Parties appeared before court to directions on hearing on 26/3/2025 when the 2nd accused counsel prayed for the review of bail conditions requiring the accused to report



- to Independent Police Oversight Authority. The accused now jointly pray for review of bail terms, particularly that condition requiring them to report to IPOA should be lifted.
5. The 2nd accused counsel stated that it was expensive for the accused who is not employed. Further that reporting to the ODPP will also be difficult as the accused would spend more money.
 6. Counsel for the 3rd accused stated that his client also has difficulty in complying with the order. That the accused have since returned to their home counties and his client travels about 300km. That the accused persons have been complying with the orders for 4 years now.
 7. The 5th accused person comes from Narok County, his counsel prays that the accused be exempted from attending court and further prays for virtual proceedings.
 8. The 4th accused counsel submitted that investigations were completed and that lifting the order would not be prejudicial to IPOA.
 9. Counsel for Independent Oversight Authority advised that reporting to IPOA offices did not concern investigations. The investigations were complete at the time of the bail orders.
 10. They concede to the application noting that reporting to IPOA is expensive that the accused may report to the nearest office of the Director of Prosecution.

Analysis & Determination

The Rulings On Bail

11. The ruling of Bwonwonga J delivered on 29/11/2021 disallowing the first application for bond on ground that the prosecution proved that the accused were likely to interfere with witnesses.
12. The court also found at page 10 that the all the accused had fixed abodes and that the accused were not flight risks.
13. The orders were later reviewed by the court on 1/11/2022 when this court noted the delay on the part of the prosecution and lack of compliance on the part of the prosecution and to timeously discharge its disclosure obligations under Article 50 (2) (j).
14. The court found that circumstances had changed which was caused by delay in the prosecution of the matter. The accused were to be released conditional bail terms at a cash bail of ksh 800,000/= and were report to IPOA once every two weeks during working days in every calendar month
15. The matter came up for pretrial directions on 23/11/2022 when parties agreed on a date for pretrial conference to be done on 13/12/2022. What is important to the matters at hand is that parties also entered into a consent on 23/11/2022 in the following terms
16. That the accused will be reporting once every month on 15th day or if it's a weekend on the subsequent day in the towns shown below:-
 1. The 1st accused was to report to IPOA offices at Garissa office
 2. The 2nd accused was to report to IPOA offices at Mombasa
 3. The 3rd accused was to report to Kisumu office
 4. The 4th accused report to IPOA Kisumu office
 5. The 5th accused to report to IPOA Nairobi office.



17. I also note that prebail reports were filed during bail applications and confirmed the accused Home Counties and places of residence. The 1st accused hails from Garissa County , the 2nd accused is from Makueni , the 3rd accused hails from Siaya County , the 4th accused is from Nyamira county while the 5th accused comes from Narok .

Issues for Determination.

18. From the above background the accused have moved court for the 3RD time on bail orders. I have considered the circumstances of the case and the oral submissions of parties on record and find that the only issue for determination is whether the bail condition can be reviewed and /or vacated .
19. The judge in the above rulings considered the circumstances of the case and exercised discretion in granting bail under Section 123A of the *Criminal Procedure Code*.
20. It is trite that the right to bail is not absolute and that it can be declined or allowed depending on the circumstances of the case. The objective of the bail oils to ensure that the accused attends court, see the case of Republic v Danson Mgunya & Another Cr. Case No. 26 of 2008 [2010] eKLR, while the Conditions of bail are meant to prevent the accused from absconding or taking flight which works to protect the wider administration of justice .They also supervise the accused to ensure he does not breach the conditions of bail .
21. In the case of Republic –VS- Danfornd Kabage Mwangi [2016] eKLR the court held in part that
- “ Granting bail entails the striking of a balance of proportionality in considering the rights of the applicant who is presumed innocent at this point on the one hand, and the public interest on the other. The cornerstone of the justice system is that no one will be punished without the benefit of due process. Incarceration before trial, when the outcome of the case is yet to be determined, cuts against this principle. The need for bail is to assure that the accused person will appear for trial and not to corrupt the legal process by absconding. Anything more is excessive and punitive...”
22. Bail terms should not be too lenient to encourage absconding or too stringent to frustrate the main objective of Article 49 .
23. In the case of Republic –vs- Wambugu Neutral citation: [2023] KEHC 19068 (KLR) this court held that ,
- “ The Bail and Bond Policy Guidelines provide that ‘...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing.”
24. The fact that the accused are no longer employed is not new to the case , the accused were said to be former police officers and were interdicted after charges .That has been the status quo during the trial.
25. The difficulties faced by the accused are also appreciated, these challenges mirror economic hardships they suffer by virtue of being unemployed and lack financial resources and may affect their mobility.



26. However, the court cannot lift the orders requiring attendance at IPOA offices as supervisory conditions of bond are meant protect these criminal proceedings. The accused must also be within the jurisdiction of the court and within the reach of the investigating officer until the case is determined.
27. Moreover, the consent of parties entered on 22/11/022 in the presence of the court cannot be set aside unless it is proved to be tainted with misrepresentation, mistake or fraud. The consent enforced the bail terms enabling compliance at the accused convenience by permitting them to report to IPOA offices within their reach. The Prebail reports confirm that accused come from the same area of the listed IPOA offices they were to specifically report to.
28. I note the Accused persons have duly attended Court. Since Corvid 19 Corona virus pandemic the Judiciary introduced and maintained virtual hearing to enable parties access justice. I find in light of the Consents signed by parties this court cannot vary terms of the Consents but in light of great financial strain and expense, the Accused persons are allowed to comply with the terms of Consent to report physically BUT on specific challenge any of the Accused person to apply to IPOA to report virtually online with /to IPOA. Hearings that shall remain in open Court physically. I find that the application is not merited in any other way.

RULING DELIVERED & DATED IN OPEN COURT PHYSICALLY /VIRTUALLY AT THE CRIMINAL DIVISION NAIROBI THIS 8/4/2025

M.W.MUIGAI

JUDGE

In the presence of

Ms. Tum OD PP – present online

IPOA

