



**Karanja v Republic (Criminal Case E001 of 2024)
[2025] KEHC 6362 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E001 OF 2024**

**TW OUYA, J
MAY 22, 2025**

BETWEEN

JAMES GITAU KARANJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an oral application for bail/bond by the applicant through his counsel pending trial. Counsel submitted that he has raised the matter owing to the awaited pre bail report which was awaited. He argues that although the pre-bail report concludes that the accused is not suitable for bail, the accused is now well and mentally fit and intends to go back to his job as a high school teacher once granted bail and favorable bond terms.
2. Counsel Mwangi for the state while opposing the application for bail/ bond pending trial relied on the Affidavit dated 17.3 2025 giving compelling reasons to the effect that the accused is likely to interfere with key witnesses who are his immediate family members namely his mother, brother and spouse. In particular counsel points out that his spouse, Julia Muthoni Waithera feels that her security will not be guaranteed if the accused is released on bond since their separation, the accused had continued to stalk her even threatening her with death before eventually killing two of their biological children.
3. Counsel submits further that the accused is a flight risk having fled from jurisdiction to Mombasa immediately after committing the crime till 19.12 2023 when he was arrested. Considering that the nature and circumstances of the crime are so grave, there is no guarantee of his coming back in the event that he disappears.
4. Counsel makes reference to the bail/bond assessment report dated 1st April 2025 which concluded that the accused is unsuitable for bond/bail and to revisit the issue at a later date in future. The report cites the unwillingness of the family members to accept him back on bond due to the existing volatile



emotions at this time. There is also an indication his likelihood to harm himself due to his history of mental instability which relies heavily on his adherence to medication. This is coupled with accused's admission to abusing alcohol and miraa.

5. According to the report, the family is unwilling to stand surety for him at the moment.
6. This court, having considered the application before it together with counsels' submissions and the pre-bail assessment report finds that there are compelling reasons which when considered in the circumstance, stand in the way of the accused's access to bail/bond.
7. The law relating to bail/bond pending trial was espoused in the case of *Maalim v Republic (Criminal Case E001 of 2022)* [2022] KEHC 13266 (KLR), where the court stated:

“It is settled law that under article 49 (1) (h) of *the Constitution*, a person who has been arrested has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there are compelling reasons against such release.

A reading of this constitutional provision leaves no doubt that this right is guaranteed to every arrested or accused person irrespective of the seriousness of the offence charged. As correctly pointed out by the accused person in his supporting affidavit, the constitutional right to bond or bail pending trial is qualified not absolute as it is subject to existence of compelling reasons.

The Constitution has not defined what constitutes compelling reasons. This is left for determination by the trial court depending on the circumstances of each case.

However, the Court of Appeal in *Michael Juma Oyamo & Another V Republic*, [2019] eKLR has given guidance on what would amount to compelling reasons to warrant denial of bond pending trial. The court stated as follows:

“..... The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.

It is trite that the duty to demonstrate existence of compelling reasons lies squarely on the prosecution in cases where the state is opposed to the admission of an accused person to bond or bail pending trial. To discharge this burden, the prosecution must support with evidence the reasons advanced in opposition to grant of bond or if what is relied on is the commonly cited reason which is what has been advanced in this case that if released, the accused is likely to interfere with witnesses or that his safety may be compromised, the prosecution must place before the court material to demonstrate that their fear is well founded and justified. Mere allegations cannot suffice.

I cannot put it better than the Court of Appeal did in *Patius Gichobi Njagi & 2 others V Republic*, [2013] eKLR, where it stated as follows:

“... where the State opposes bail on account of any of the often-cited and commonly known fears which it routinely expresses including, but not limited to the likelihood of the accused absconding and failing to attend trial; likelihood of interference with witnesses; the possibility of hostile and even violent reception of the accused by the community upon release, the state must do more. It must step out of the realm of imagination and speculation and provide the court with persuasive argument backed by facts and experiences, and circumstances unique to each individual case that would make the court appreciate the need



to deny an applicant bail. As stated in the celebrated case of *Jaffer v Republic*, 1973 EA 39, the court cannot be called upon to speculate.”

I must state at this juncture that the overarching consideration in determining whether or not to admit an accused person to bond or bail pending trial is whether if released, the accused will turn up for his trial or will abscond. Other factors the court ought to consider are set out in section 123 A of the *Criminal Procedure Code* and the Kenya Judiciary’s Bail and Bond Policy Guidelines, March 2015 and include the following:

- a) Whether the accused is likely to commit, or abet the commission of a serious offence;
 - b) Whether the accused is likely to endanger the safety of victims, members of the public or national security;
 - c) Whether the accused is likely to interfere with witnesses, investigations or evidence;
 - d) Whether it is in the public interest to detain the accused person in custody.”
8. This court is satisfied that from the foregoing, compelling reasons have been raised by the prosecution and supported by the social inquiry report that the accused is not suitable for bond/bail on account of his being a security threat to the victim’s family, the prevailing volatile emotions between the accused and his immediate family who are unwilling to have him released at this moment. Particularly, his spouse is apprehensive that he might harm her as he had stalked and threatened her prior to their separation before he killed their two children. The family believes that he is also likely to harm himself owing to his history of mental instability and abuse of alcohol and miraa.
 9. Besides the above, the applicant is believed to be a flight risk owing to his disappearance after committing the offence.
 10. For the above reasons, this court is inclined to deny this application for bond/bail pending trial. The application is therefore denied with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT this 22nd DAY OF MAY, 2025.

HON. T. W. Ouya

JUDGE

