



REPUBLIC OF KENYA



**Munyuru & another v Republic (Criminal Case E003 of 2025)
[2025] KEHC 6558 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E003 OF 2025**

TW OUYA, J

MAY 20, 2025

BETWEEN

DAVID MUIGAI MUNYURU 1ST APPLICANT

FRANCIS NJOROGE MUNYURU 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application for bail by the applicants by through their counsel based on the conclusion of the pre bail report that the accused persons are suitable for bond/bail. Counsel submits that both the accused have strong community ties and married with children. That both are not flight risks and reside within the jurisdiction of the court.
2. For instance, counsel points out that the 1st accused is the Chairman of his local church and also chairman of the Boda Boda Association. That their families are ready to offer surety and are willing to receive them home. That there is no evidence of the accused interfering with witnesses as earlier alleged nor are they a threat to anyone.
3. Counsel prays for favorable bond terms due to their meagre financial capability.
4. Counsel Mwangi for the state while opposing the application for bail/bond relies on their affidavit dated 17.3 2025 and argues that the only plausible compelling reason is that there is a high chance of the two accused persons who are brothers interfering with witnesses. They are alleged to have killed their brother after an altercation with their father who happens to be the only eye witness. There is fear that if released on bond , chances are high that they may interfere before he testifies. Counsel prays to the court to with hold determination of this application pending the father's testimony before the accused can be released.



5. I have duly considered the application before this court together with the affidavit and submissions by counsel from both sides. This court underscores that bail pending trial may be granted upon request at reasonable terms at the discretion of the court.
6. I have also considered the two Bail/Bond Information Assessment Report dated 27th march 2025 whose import is that the accused persons are suitable for bail/bond for reasons that they have strong family ties, are reasonable members of the community and that their family is willing to pay surety for them. The reports point out further that the accused are not a threat to their family or to the community.
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. It is apparent from the submissions by counsel for the state that they are not strongly opposed to this application being that the only compelling reason is the apprehension that the two accused are likely to interfere with the only key witness who happens to be their father and the victim’s father too. Counsel urges the court to delay determination of this application to await testimony of the father who is the key witness.
9. This court also takes into account that the bail/bond assessment report is favorable for both accused persons with no alarming report from their family or community.
10. The concerns raised by the counsel for the state concerning possibility of interference are valid but it is the only reason to be weighed against the favorable assessment reports on the accused’s suitability for bond. The request to delay the granting of bail until the key witness testifies is not supported with facts that can assist this court to consider that option. For instance, counsel has not submitted on the status of the case and when the key witness is likely to testify.
11. For the above reasons, this court is inclined to grant this application for bond/bail. The application for bond/bail is hereby granted on the following terms:

Each of the accused persons is granted bond of Kshs. 500,000 with a surety of a similar amount .

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20TH DAY MAY, 2025.

HON. T. W. OUYA

JUDGE

For Accused.....Ndonga



Prosecution.....P. Mwangi

Court Assistant.....Doreen

