



Mburu v Republic (Criminal Case 6 of 2018) [2025] KEHC 5643 (KLR) (7 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 6 OF 2018**

TW OUYA, J

MAY 7, 2025

BETWEEN

FRANCIS MAINA MBURU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application for bail by the applicant through his counsel being a second application while the matter is part heard. The application dated 12th September 2024 was brought under certificate of urgency and supported by affidavit of even date seeks for orders that:
 - i. That, this Honourable court is competent and has jurisdiction to hear and determine this application under Article 165 of the CoK.
 - ii. That, the Honourable court be pleased order/directing that the applicant be released on bail pending the hearing and determination of this trial on a charge of murder.
 - iii. That, this Honorable court be pleased to find and order that there are no compelling reasons to deny the applicant bond pending trial as provided for under article 49(1)(h) of the CoK.
 - iv. That, this court be pleased to find that the applicant qualified for a bond for a lot of time has passed since the alleged offence.
 - v. That, this Honorable court be pleased to find and order that the applicant be released on reasonable bail terms since he has exhausted all the civilian prosecution witnesses thereby no chance to interfere with the case.
 - vi. Any other order deems just in the circumstances.
2. Counsel for the applicant submitted that in making this application the applicant relies on article 49(1)8 of the *Constitution*. That the Applicant first applied for bail/bond which was denied on 12th



July 2018 on the ground that he was a security threat being that the wife of the applicant had feared for her life. Counsel argues that the applicant is no longer a security threat as the said wife and the key witnesses have since testified on 12th March 2022.

3. Counsel submits further that the accused is not a flight risk and has fixed abode at Icacaki Location within Murang'a County and will avail himself whenever required to attend court. That as stated in the applicant's affidavit, he will be willing to abide by the conditions given by this court.
4. Counsel Mwangi for the state while opposing the application for review of bond argued that the applicant has not demonstrated any change of circumstances from when the bond was denied.
5. He submits that the applicant remains a flight risk from history, the accused committed the on 10th September 2017 and left jurisdiction and was arrested in January 2018. He made reference to the social enquiry report dated 28th March 2018 from the probation office which states that the applicant is still considered a flight risk.
6. He submits further that the applicant still remains a security threat both to his family and to the local administration. That he murdered his father-in-law and that the family has raised their fears that once the accused person is released he may retaliate. That among the people interviewed, it is only the accused himself and his father who were of the opinion for bond. Counsel submits that for the above compelling reasons, the application for review of bail/bond should be denied.
7. Counsel pointed out that regarding community ties, the entire community is opposed to the applicant's release as he is a threat to their security and they have not come to terms with what he did.
8. Counsel states that besides the 4 witnesses who have testified, there remains two more witnesses and that a hearing date if given the two will testify and the prosecution will close its case.
9. I have duly considered the application before this court together with the grounds, affidavit and submissions by counsel from both sides. This court underscores that bail pending appeal may be granted upon request at reasonable terms at the discretion of the court.
10. I have also considered the Bail/Bond Information Assessment Report dated 28th March 2025 whose import is that the accused person is not suitable for bail bond for reasons that resonate with the issues raised by the prosecution. Of importance is that the immediate family members of the accused and that of the victim are apprehensive and opposed to the accused's release on bond citing security threats for his own life and his family being that the community is still hostile towards him. Besides the above, his family also view him as a flight risk.
11. Regarding his community ties, the report reveals that the community is vehemently opposed to his release on bond describing him as a threat to their security and well-being and express concern that he is a flight risk.
12. The report makes reference to an earlier report filed in 2018 where the local administration established that the accused person was a threat to the safety of the victim's wife as he had threatened her severally.
13. 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.”

14. It is apparent from the foregoing that 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 animosity the accused by the community and that he is believed to be a flight risk. The local administration and his community are vehemently opposed to his release on bond. Taking into account that there are two more witnesses to go, this court is of the view that granted a near hearing date, the prosecution will be able to close its case bringing the matter to a near end.

15. For the above reasons, this court is inclined to deny this application for bond/bail. The application for bond review is therefore denied with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON this 7th DAY OF MAY, 2025.

HON. T. W. OUYA

JUDGE

For Accused.....Ms Kimani

Prosecution.....P. Mwangi

Court Assistant.....Jackline

