



**Nduari & another v Republic (Criminal Case E012 of 2024)
[2025] KEHC 6204 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E012 OF 2024
CW GITHUA, J
MAY 14, 2025**

BETWEEN

BENARD KAHUNGI NDUARI 1ST APPLICANT

HANNAH MUTHONI KAMAU 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The two accused persons herein, Benard Kahungi Nduati and Hannah Muthoni Kamau, were charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars allege that on 21st April 2024, at Rurii village, Kiunyu sub-location, Kihumbui-ini Location in Gatanga sub-county within Murang'a County, jointly with another not before court, they murdered David Kimani Karanja.
3. On 7th October 2024, the accused persons were arraigned before this court and they denied the charges. Their learned counsel, Mr. Maingi Kamau immediately made an oral application seeking that they be admitted to bail or bond on reasonable conditions pending trial on grounds that they were casual labourers of very humble means; that they are a couple with children who were currently languishing at home on their own; that the 2nd accused person was unwell and her condition was deteriorating every day. Counsel urged the court to exercise its discretion and magnanimity in favour of the accused persons by admitting them to bond on lenient terms.
4. The application was opposed by the respondent vide a replying affidavit sworn by the Investigating Officer, PC Stanley Njenga on 19th of June, 2024. PC Njenga deposed that accused persons should be denied bond because if released, they were likely to interfere with prosecution witnesses who were their neighbours; that releasing the accused persons would put their lives at risk as members of their



community were hostile since they were aggrieved by their actions which led to the death of the deceased.

5. I have considered the application and the submissions made by learned counsel Mr. Maingi and learned prosecution counsel Ms. Muriu in support and in opposition to the application. The right to bail or bond pending trial is a constitutional right of every arrested or accused person which is protected in Article 49 (1) (h) of *the Constitution* of Kenya which states as follows;

“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.”

6. From the above provision, it is clear that the right to bail or bond is not absolute and the same can be denied if the prosecution established existence of compelling reasons warranting denial of that right. The question this court needs to answer is whether the prosecution has demonstrated that there were compelling reasons in this case to justify denial of the accused person’s right to bail or bond.
7. The phrase “compelling reasons” was defined by the Court of Appeal in *Michael Juma Oyamo & Another V Republic* (2019) eKLR in which the court cited with approval the interpretation given by the High Court in *Republic V Joktan Mayende and 3 Others Criminal Case No. 55 of 2009* regarding what constituted compelling reasons and expressed itself 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*.”

8. It is trite that the duty to demonstrate existence of compelling reasons rests with the prosecution. To discharge this burden, the prosecution must do more than make claims which were not supported by any evidence. In this case, the prosecution has urged me to deny the accused persons bond on grounds that if the application was allowed, they were likely to interfere with prosecution witnesses who were their neighbours. The prosecution has however not availed any evidence to substantiate this claim by showing that the accused persons, either by themselves or through proxies have tried to reach out to the prosecution witnesses with a view to intimidating them or interfering with their evidence in any way.
9. Even if it was true that the prosecution witnesses were neighbours of the accused persons this fact by itself is not evidence that if released, the accused persons were going to interfere with witnesses. Without proof of actual or perceived interference, the prosecution’s claim amounts to a mere allegation which cannot form the basis of denying the accused persons their constitutional right to liberty pending their trial. In any event, even where the prosecution has established that there was a likelihood of accused persons interfering with witnesses if admitted to bond, this does not necessarily have to lead to denial of bond since the court can impose stiff conditions to the grant of bond that would ensure that the risk of the alleged interference was minimized if not eliminated altogether.
10. The other reason advanced by the prosecution in opposition to the application is that if released, the safety of the accused persons would be in jeopardy given hostility expressed towards them by members of their community. The pre- bail reports filed in court on 25th October, 2025 do not support this claim and actually asserts the complete opposite. The reports confirm that the social inquiries made by the Probation Officer revealed that accused persons village mates and the local administration were positive towards the accused persons and they had no objection to their admission to bond.



11. It is important to remember that the overarching consideration which courts should bear in mind when determining whether or not to admit an accused person to bond is whether there was evidence that if released, the accused was likely to abscond or will turn up for his or her trial.

In this case, the prosecution has not alleged that the accused persons were a flight risk. The pre- bail reports confirm that the accused persons have a fixed abode at Rurii village where they lived with their family prior to their arrest.

12. In view of the foregoing, I have come to the conclusion that the prosecution has not established existence of compelling reasons that would mitigate against release of the accused persons on bond. Considering the personal circumstances of the accused persons including the fact that they are a couple with a young family of three children who are minors the youngest one being 2 years who are currently living on their own, I hereby allow the application and admit the accused persons to bond on the following terms;

- i. Each accused will be released upon executing a personal bond of Kshs. 500,000 together with one contact person, preferably a relative who will be approved by the Hon. Deputy Registrar of this Court.
- ii. Once released, the accused persons shall not contact the prosecution witnesses or interfere with them in any way whether directly or indirectly.
- iii. The accused persons shall attend this court whenever required.
- iv. Failure to comply with any of the above conditions shall lead to cancellation of their bond.
- v. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 14TH MAY 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

Both Accused persons

Ms Muriu for the Republic

Mr. Ndonga for Ms Wangui Wangai for both accused

Ms Susan Waiganjo, Court Assistant

