



**Republic v Gitonga (Criminal Case E008 of 2024)
[2025] KEHC 6619 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E008 OF 2024
AK NDUNG’U, J
MAY 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOUGLAS MURANGIRI GITONGA ACCUSED

RULING

1. The Accused person in this case, Douglas Murangiri Gitongais charged with murder contrary to sections 203 and 204 of the [Penal Code](#). It is alleged in the information dated 26/07/2024 that on 30/06/2024 at Kalalu area in Laikipia East Sub-county within Laikipia County murdered Ann Joy Kathure. On 22/08/2024, he pleaded not guilty to the charges.
2. The Republic has opposed bail through an affidavit dated 31/10/2024 sworn by PC Job Otieno, one of the investigating officers. The reasons advanced for opposing bail are:-
 - i. That the deceased’s mother is a crucial witness and due to their social relationship and the fact that she is very well known to the Accused who is well aware of her place of abode, there is a reasonable apprehension that there will be interference and intimidation of this witness.
 - ii. That after committing the offence, the Accused was confronted by angry members of the community around Kalalu which prompted him to run away and seek refuge at Nanyuki police station instead of Kalalu police post which is nearer.
 - iii. That his release will therefore disturb public order, peace or security since the situation around Kalalu area is still volatile hence his detention will be necessary to preserve public order and prevent potential revenge attacks on him.



- iv. That there are more probabilities and incentives for the accused to abscond as he is charged with the offence of murder which if he is found guilty, the punishment could be that of death penalty.
 - v. That the prosecution has overwhelming and irrefutable evidence that points to the accused guilt and there is a high probability that the prosecution will secure a conviction thus there is fear that if released, he may flee from the jurisdiction of this court.
3. In response to the prosecution application opposing bail, the accused filed a replying affidavit dated 26/02/2025. He averred that bail/bond is a right accorded by the Constitution and he should be presumed innocent until the contrary is proven. That the prosecution has failed to demonstrate existence of any compelling reasons as to why bail should be denied and has failed to show that he is likely to abscond court if granted bail. That the prosecution is supposed to place material evidence to demonstrate actual or perceived interference with witnesses but has failed to do so. Further, there are legislative mechanisms in place to protect witnesses who are shown to be under real threat. That the averments by the prosecution that he will disturb public peace is false as the probation report indicated that he does not pose security risk in the village.
 4. The application was canvassed by way of written submissions. The State counsel submitted that right to bail is not absolute and can be denied if there are compelling reasons. That what constitutes compelling reasons as per paragraph 4.26 of Bail and Bond Policy is that the prosecution only needs to satisfy the court on a balance compelling reasons that justify denial of bail. She maintained that the accused is likely to interfere with the deceased's mother who is a crucial witness and urged the court to deny him bail until the said witness has testified. She maintained that Kalalu area is still volatile as he was confronted by angry members of the community and should he go back to the said area, he will be attacked and his life will be in constant danger. Hence, pretrial detention is necessary to preserve public order and to prevent revenge attacks.
 5. That given the nature of the charge and seriousness of the punishment, it can be assumed that there are more incentives for him to abscond. Further, the deceased met her death in a gruesome manner which was an affront to her human dignity. On the strength of the prosecution case, she submitted that the accused has been supplied with committal bundles and he is therefore fully aware of the weight and strength of the case against him. That the evidence against him is strong, compelling and overwhelming and this can be an incentive to abscond.
 6. In rejoinder, the accused's counsel submitted that the accused is entitled to right to bail as prescribed under Article 49(1)(h) of the Constitution. That though this right is not absolute, it can only be limited if the prosecution demonstrate that compelling reasons exist to justify denial of bail. That the prosecution has failed to place material evidence to demonstrate any actual or perceived interference with witnesses, probability of absconding court or breaching peace and security. That the accused person should not be deprived of his freedom unreasonably as the prosecution has not tabled evidence to support their averments. Further, bail should not be refused merely as a punishment as this would conflict with the presumption of innocence provided under Article 50 of the Constitution. He urged the court to release the accused on reasonable bail terms as he will endeavour to attend court without fail.
 7. I have considered the rival arguments proffered. I have also read the pre-bail report which is in favour of the accused person.



8. Bail pending trial is a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict, must be reasonable.
9. Article 49(1) (h) of the *Constitution* of Kenya, 2010 provides that every accused person has a right-
 - “(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
10. “Compelling reason” is not defined in the Constitution or in any law that this court is aware of. The term is also not defined in *Black’s Law Dictionary*, Tenth Edition. However, the term “Compelling need” is defined there as –
 - “A need so great that irreparable harm or injustice would result if not met.”
 - A note following that definition states –
 - “Generally, courts decide whether a compelling need is present based on the unique facts of each case.”
11. Compelling reason therefore, in this court’s view, is a reason that must militate against granting the accused bail, such as proven likelihood of him/her not attending court, interference with witnesses, harm to witnesses or to himself/herself, and the like. The important word here is proven. It is not just a matter for the discretion of the court. He who seeks to deny an Accused person his constitutional right to bail pending trial must therefore place evidence before the court as would establish, on balance, the compelling reason urged. It is not enough to merely allege without evidence.
12. The reasons advanced by the prosecution for denial of bail are;
 - i. Interference with witnesses.
 - ii. Disturbance of public order or undermine public security.
 - iii. Nature of the charge and seriousness of the punishment.
 - iv. The strength of the prosecution’s case.
13. The third reason can be dismissed right away. The perceived seriousness of the offence and the sentence in my view can never be a compelling reason to deny an accused person the constitutional right to bail on itself unless read together conjunctively with other reasons. Though the *Judiciary Bond and Bail Policy* 2015 lists the seriousness of the offence as a tenet for consideration, court must not lose sight of the fact that Article 49(1)(h) grants an accused the right to bail irrespective of the seriousness and the nature of the offence. See *R v Mwangi* [2016] eKLR where the court held that: -
 - “Bail cannot be refused simply because the accused has been charged with a very serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the ground for refusing bail exists.”
14. Same applies to the fourth reason. The perceived strength of the prosecution case in my view is not a compelling reason to deny an accused person his constitutional right to bail. The Accused has a



constitutional and legal right to the presumption of innocence until and unless proven guilty to the required standard. In *Oscar Edwin Okimaru v Republic* [2021] eKLR it was stated that;

“To my mind, for this court to base its decision on the weight of the evidence to be adduced against the accused persons at the stage of determination of an application for bail, may well be prejudicial. While the Court is not necessarily barred from taking a dim view of the evidence in setting conditions for the grant of bail, that cannot be the basis for denial of a constitutional right to bail.”

15. Interference with witnesses and disturbance of public order and peace, if proved on balance, are compelling reasons to deny an accused person bail, one, because interference with witnesses will be subversion of justice, two, the society or the community might cause harm to him.
16. In the present case, have those allegations been proved on balance? The prosecution has stated that the accused is likely to interfere with the deceased’s mother who is a crucial witness in this case. The prosecution stated that due to social relationship, the witness is well known to the accused who even know her place of abode therefore, there is a reasonable apprehension of interference and intimidation to this witness directly or through proxies.
17. It is trite that the specific instances of, or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence in support thereof as to persuade the court to deny the accused bond on this ground. In *R. V. Dwight Sagaray & 4 others*, 2013 eKLR, where the court stated that: -

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must also show the Court for example the existence of a threat or threats to witness; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and the witnesses among others..., at least some facts must be placed before the court otherwise it is asking the court to speculate.”

18. Granted, this court has a duty to make reasonable inferences from the facts and circumstances of each case. In the instant matter, the mother of the deceased is said to have witnessed the incident giving rise to the charges herein. There is every likelihood of discernable trauma on the part of such witness if they were to mingle freely with the Accused. The fear this may instill may go a long way in affecting the quality of the evidence such a witness would give. In my view, it would serve the cause of justice to allow the witness testify before the Accused could be released on bail if at all.
19. As to disturbance of peace and security, the prosecution’s counsel argued that the situation around Kalalu area is still volatile and tensions are still high and should the accused be released to go back to the area, there is a likelihood that his life will be in danger. It is worthy of note that the Accused had to seek refuge at Nanyuki police station after the incident clearly demonstrating that his safety and public order were at risk. This, again, is a good reason why bail should be denied , at least in the interim.
20. I am satisfied that sufficient compelling reasons exist for denial of bail and the objection by the prosecution is upheld. The bail application may be renewed as and when circumstances change.
21. With the result that bail is denied. The Accused shall remain in custody.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MAY,2025.

A.K. NDUNG’U



JUDGE

