



**Republic v Miningwo & another (Criminal Case E017 of 2025)
[2025] KEHC 6092 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E017 OF 2025**

**JM NANG'EA, J
MAY 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ZAKAYO KOMEN MININGWO 1ST ACCUSED

JONATHAN SIRMA CHERUTOI 2ND ACCUSED

RULING

1. The accused persons have been arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge allege that on 21/3/2025 at Lumeyek Area, Loruk Location of Tiaty East Baringo County (sic), they jointly with others not before the court murdered Victor Pkukat Sebei. They pleaded not guilty.
2. The Prosecution opposed release of the accused on bond/bail relying on an affidavit sworn by the Investigating Officer (CI Joseah Maritim) on 8th May 2025.
3. The defence Counsel (Mr. Kiptoon and Mr. Bartuos) insist that the prosecution has not demonstrated compelling reasons mitigating against release of the accused persons on bond/bail. Learned Counsel for Kiptoon submitted that the accused have the right of release on bond/bail upon reasonable conditions pursuant to the provisions of Article 49(i) (h) of the Constitution of Kenya 2020. According to the Counsel, the prosecution's affidavit evidence does not disclose compelling reasons for rejection of their application.
4. The defence Counsel conferred that the accused persons are Kenya Police Reservists who regularly report to Loruk Police Station in the course of their duties. The court is told that they had voluntarily presented themselves to the station when they were arrested. They have families and places of abode and thus not a flight risk, according to Counsel.



5. Regarding an allegation in the Investigating Officer’s affidavit that the accused have been threatening their witnesses, it is pointed out that the threatened witnesses have not been disclosed
6. The defence Counsel therefore submit that there is no sufficient factual and legal basis for denial of bond/bail.
7. Mr. Kihara (Prosecution Counsel) opposes the application. It is averred that inter alia in the prosecution affidavit, opposing bail/bond that intelligence information received by the police shows that there is a high likelihood of retaliatory attacks against the accused persons by the deceased;s rival community if they are released. The accused persons’ safety if released would therefore be at risk, according to the prosecution.
8. Moreover it is argued that the accused persons lifestyle coming from a Pastoralist Community and are therefore a flight risk. Investigations underway aimed at apprehending other alleged accomplices of the accused persons are also feared to be jeopardized if the accused persons get released.
9. The court is therefore urged to dismiss the defence application of the basis had compelling reasons exist for denial of bond/bails.
10. I have considered learned Counsel’s rival arguments on the application. Article 49(1) (h) of the [Constitution](#) provides;

“ An arrested person has the right-

To be released on bond or bail, on reasonable grounds, pending a charge or trial, unless there are compelling reasons not to be released”

Concise Oxford Dictionary defines “compelling” as “forcing or obliging to do something; bring about by force or pressure.”
11. Section 123A of the [Criminal Procedure Code](#) further stipulates thus;-

“(i) Subject to Article 49 (1) (h) of the [Constitution](#) and notwithstanding section 123, in making a decision on bail and bond the court shall have regard to all the relevant circumstances and in particular –

 - a. the nature and seriousness of the charge;
 - b. the character antecedents associations and community ties of the accused person;
 - c. the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and;
 - d. the strength of the evidence of his having committed the offence.
 - e. A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;-
 - a. has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;



b. Should be kept in custody for his own protection.”

12. As held in the famous case of *Ng'ang'a vs Republic* (1985) KLR 451, the primary considerations before deciding whether or not to release an accused or arrested person on bond/bail is whether there are sufficient safeguards to guarantee his attendance at trial.
13. If therefore there is convincing evidence that the accused will not attend trial if released; or that they are interfering or with interfere with witnesses; or they are a flight risk; or that their security is at risk because of hostility in their community as alleged by the prosecution, then these are among grounds for denial of bond/bail [(see case law in *Republic vs Wanjiku & Another* (criminal case No. E002 of 2024 [2024] KEHC 4663 (KLR) (2 May 2024) (Ruling) among many other decided cases)].
14. Having considered the prosecution evidence and Counsel Submissions the burden is on the prosecution to show on a balance of probability that compelling reasons exist to warrant denial of bond/bail to the accused persons. No prima facie evidence is however presented proving that the accused face danger if released. Evidence of interference with or threats to witness is not also tendered. Neither is it shown that the accused are a flight risk given the unchallenged assertion by the defence Counsel that they are Kenya Police Reservists employed by the Government.
15. I find in the circumstances that the prosecution failed to discharge the burden of demonstrating compelling reasons for denial of bond/bail. Consequently, the application is granted and each accused person will execute bond of Kshs. 500,000/= plus one surety each of the same amount.
16. Ruling accordingly.

RULING DELIVERED THIS 13TH DAY OF MAY, 2025 IN THE PRESENCE OF:

J. M. NANG'EA, JUDGE.

The Prosecution Counsel, Ms Sang

The Defence Counsel, Mr. Bartuos

Accused, present

The Court Assistant, Jeniffer.

