



Republic v Nac (Criminal Case E004 of 2025) [2025] KEHC 5662 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E004 OF 2025
FN MUCHEMI, J
MAY 8, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CYNTHIA NAC ACCUSED

RULING

1. The accused person was charged with murder contrary to section 203 as read with 204 of the [Penal Code](#). The particulars of the offence are that on the 20th day of January 2025 at Mastore Area within Juja Sub County, Kiambu County murdered Peter Macharia Njuguna. On 12th February 2025, the accused person entered a plea of not guilty.
2. The prosecution filed an Affidavit of Compelling Reasons which they have labelled an Affidavit in Opposition to Bond dated 12th February 2025 sworn by PC Bernard Ngeno who is the investigating officer in the instant matter. He deposes that the accused person is a Ugandan national and has no identification papers. Further the accused person has no fixed abode, was living in a rented house and was a bar attendant within Mastore Area at the time of the incident. The deponent is apprehensive that should the accused person be released on bail or bond she is a flight risk and may abscond and return to Uganda rendering her untraceable.
3. The deponent avers that he does not know the accused person's family background or rural home thus may not be able to trace her if she absconds. The deponent further avers that the accused person has been charged with a very serious offence. Further, there is still tension and hostility at Mastore Area where she lived at the time of the incident and the community there may retaliate if she is released on bond.
4. The accused person filed a Replying Affidavit dated 19th February 2025 in opposition of the Affidavit of compelling reasons. He states that bail/bond is a constitutional right guaranteed under Article 49(1)(h) of the [Constitution](#) of Kenya. Furthermore, the accused person contends that the affidavit of



compelling reasons does not adduce sufficient grounds to deny her bond and is therefore unmerited. The accused person states that she is a Ugandan national but she has no papers as they got lost on her way home when she was robbed. She further states that she reported the matter at Juja Farm police station and one Wainaina Waweru, who is a prosecution witness in the case confirms the same.

5. The accused person avers that she has an aunt who works for gain in Kenya and who is her surety making sure that she attends court when required.
6. The accused person states that the investigating officer has not furnished any proof that tension is high at Mastore Area which in any event does not constitute parameters which deny her being granted bail or bond. The accused person avers that's he cannot leave the country without her passport which has not been found until date.
7. Directions were issued that parties do file written submissions and the record shows that the accused person complied by filing submissions on 21st March 2025. The prosecution on the other hand had not filed her submissions by the time of writing this ruling.

The Accused's Submissions.

8. The accused relies on Article 49(1)(h) of the *Constitution*, the Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 and the case of Republic vs Fredrick Ole Leliman & 4 Others [2016] eKLR and submits that the admission to bond is a right preserved under the law unless compelling reasons are presented by the prosecution to warrant the denial of the accused person to bond terms.
9. The accused person submits that the prosecution has not adduced any evidence to back up the claims contained in the affidavit of compelling reasons. The accused person relies on the case of Republic vs Kathure (Criminal Case E006 of 2024) [2024] KEHC 15012 (KLR) (28 November 2024) (Ruling) and submits that the prosecution has not provided by way of affidavits or other evidence that she is a flight risk and that she poses as a danger to members of the community if she is released on bail. The accused person further relies on the case of Republic vs Joktan Mayende & 3 Others (2012) eKLR and submits that the current court has the discretion to issue terms upon which an accused shall perform once admitted to bail or bond.

The Law

Whether the reasons for opposing bail are merited in terms of Article 49(1)(h) of the *Constitution*.

10. Article 49(1)(h) of the *Constitution* provides that:-
An accused person has the 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.
11. It follows that the right to bail is not absolute and where there are compelling reasons, that right may be restricted. Nevertheless, since the *Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
12. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 which sets out judicial policy on bail thus:-
“the following procedures should apply to the bail hearing:
 - a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution



must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-

- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- f. That the accused person is likely to interfere with witnesses or evidence; or
- g. That the accused person is likely to endanger national security; or
- h. That it is in the public interest to detain the accused person in custody.”

13. In *Republic vs Fredrick Ole Leliman & 4 Others* [2016]eKLR the court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of *Ng’ang’a vs Republic* 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the *Criminal Procedure Code* (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

- a. The accused will fail to turn up at his trial or to surrender to custody;
- b. The accused may commit further offences; or
- c. He or she will obstruct the course of justice

The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
- b. The strength of the prosecution case;
- c. The character and antecedents of the accused;
- d. The likelihood of the accused interfering with prosecution witnesses.”

14. The issue that arises is whether the reasons adduced by the prosecution are compelling enough such that the court should not grant bail pending trial.

15. The prosecution argues that the accused person is a flight risk as her permanent place of abode is unknown and that she is a Ugandan national without any identification papers. The prosecution further states that tension and hostility is still high at Mastore area where the incident took place.



16. In regard to tension and hostility being high at Mastore area being high and as such, the accused person's life is at risk, the prosecution did not demonstrate by way of evidence that that is the case. Further the allegation that the accused person is a flight risk is not supported by any evidence, which is yet another matter of speculation. In the case of *R vs Joktan Mayende & 3 Others* (2012) eKLR, the court in considering the scope of Article 49(1)(h) stated as follows:-

The phrase "compelling reasons" denote that the reasons are forceful and convincing as to make the court feel strongly that the accused should not be released on bond. Bail should therefore not be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the *Constitution*.

17. However the court takes note of the fact that the accused person is a Uganda national with no identification papers. Furthermore, the pre bail report dated 25th February 2025 indicates that the Kenyan identity card number she provided is registered under a different person. Although the accused person states that she reported the matter at Juja Farm police station she did not attach any proof to that effect. Notably, she may abscond the country to Uganda without her passport as she may get a pass at the border. It is therefore my considered view that the accused person may be admitted to bail or bond but at very stringent terms.

Conclusion

18. I am of the opinion that the prosecution has not proved on a balance of probabilities that there are compelling reasons to warrant the denial of bail.

19. Consequently, I grant bail pending trial to the accused on the following terms:-

- a. That he be released on bond of Ksh.2,000,000/= with two (2) sureties of alike amount.
- b. That upon release on bail the accused be attending monthly mentions before the Deputy Registrar pending disposal of his case.
- c. That he will not leave the jurisdiction of this court without its permission.

20. It is hereby so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

