



**Republic v Awuor (Criminal Case E037 of 2024)  
[2025] KEHC 6047 (KLR) (Crim) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6047 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E037 OF 2024**

**AM MUTETI, J**

**MAY 7, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TOBIAS ODHIAMBO AWUOR ..... ACCUSED**

**RULING**

1. The applicant in this matter is charged with the offense of murder
2. It is alleged that on the 19<sup>th</sup> May 24 along Kangundo Road within Komarock area in Njiru SubCounty of Nairobi County he murdered John Warui Mwangi.
3. The applicant was arraigned in this court on 14/6/2024 but the plea was not taken until the 9/9/2024 due to delay in preparation of a mental assessment report.
4. The defense on that date indicated that they were seeking to have the accused released on Bail bond but MS. Gichui who appeared for the state indicated that the state was opposed to his release on bail and that they intended to file an affidavit to oppose bail.
5. The court allowed the prosecution time to do so and one CPL Odongo the investigating officer filed an affidavit in which he deposed that the accused person had no known fixed abode thus, in his view, he was a flight risk. That was the only compelling reason that the state put forth in asking this court not to order his release on bail.
6. The defense on their part submitted that the accused at the time of the offense resided along Kangundo Road and that he intends to return and leave in the same place thus according to the defense the allegation by the prosecution that the accused has no fixed abode is made without any factual basis.



7. The Defense counsel urged the court to consider that if the accused is released on suitable bail terms, he will be willing to comply and return to this court as and when required to do so to face his accusers.
8. The court also received a pre-bail report dated 22/10/2024 prepared by Kiriga Kimani probation officer based in Milimani court.
9. The report indicates that the accused enjoys strong social support from the community he lived with and the officer recommends that he may be considered for release on bail.
10. MS. Njoroge who argued the matter for the state submitted that the accused at the time of the commission of the offense lived in a makeshift house provided by the employer and that he had no gainful employment or known business thus the state was apprehensive that given his status he might jump bail if released.
11. The release of an accused person on bail is a matter that is constitutionally underpinned.
12. Article 49(1) (h) provides that any person accused of committing a criminal offense may be released on bail/ bond unless there are compelling reasons to justify his continued detention.
13. The spirit of *the Constitution* of Kenya 2010 is that bail should be denied only in those cases where the state through presentation of material evidence established that there exist reasons that are compelling enough to justify the denial of bail.
14. The court must be persuaded that the reasons are not a mere apprehension on the part of the state.
15. The reasons advanced by the state in asking the court not to grant bail in this case are not compelling enough to justify the denial of bail.
16. The fact that one lived in a makeshift house provided by an employer is not by itself proof that person has no fixed abode.
17. The fact of one having a fixed abode is a matter of evidence that can be adequately dealt with by the court during the process of approval of bail.
18. It would in this court's view, be a matter that can be adequately taken care of through the terms that this court will impose.
19. Further, the fact of a person not being employed or having a known business is not good enough to have an accused person denied bail.
20. The issue of unemployment in the present world, is a global phenomenon that this court under Section 60 of the Evidence Acts takes Judicial notice of.
21. The economic situation that a particular individual finds themselves in is a matter that can be attributed to many factors. The social status of a person should not be used to his determinant and form a basis of denying a person the enjoyment of his constitutionally guaranteed right to bail.
22. The invitation by the state to this court to consider the economic situation of the accused is an open invitation to this court to venture into discrimination of the poor in society which would be against the right to equality, equal benefit and protection of the law under Article 27 of *the Constitution* of Kenya.
23. The poor and the rich alike must be allowed to drink from pure springs of justice that our robust, greatly reformist and transformative Chapter of the Bill of Rights under *the Constitution* provides to all persons in Kenya.



24. Poverty must never be taken to be some form of disability to deny people their constitutional rights. The law is blind to the social standing of a person whenever their rights are being considered.
25. The court would only look into the personal circumstances of the person in setting the terms in line with bail and bond guidelines.
26. The court in doing so, would basically examine the circumstances of the individual to ensure that the terms imposed do not amount to a denial bail.
27. It is perhaps important to point out that it is in fact more likely that men of means once released on bail may take flight since they have the means to do so unlike a poor man who might just retire to his remote village to await his fate as the wheels of justice painfully grind.
28. Having said so and following in the wisdom expressed by Justice Ibrahim M (as he then was) in Republic Vs. Danson Mgunya & Another (2010) eKLR that liberty is precious, and must never be taken lightly, this court finds that the reasons advanced by the prosecution are not compelling enough for the court to deny bail.
29. This court therefore makes the following orders:-
  - a. The accused person may be released on a bond of Kenya shillings 1 million plus one surety of similar amount.
  - b. The accused person shall provide details of his fixed abode and shall avail a copy of a letter from the local chief confirming that he lives in the said locality.
  - c. The accused shall also provide contacts of two close relatives who may be contacted by the investigating officer or this court should the accused person be required to attend court at any time.
  - d. The persons whose telephone contacts shall be provided under condition (c) above shall remain under duty to maintain the said contacts throughout the trial and be ready to produce the accused before the court whenever required.
  - e. The accused shall maintain a mobile phone number which should remain open 24/7 throughout the period of the trial and provide the telephone number to the court before approval of the board terms.

28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF MAY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

Ms Njoroge for the state

Wanyonyi for the Accused

