



**Director of Public Prosecution v Sakari (Criminal Case
E030 of 2025) [2025] KEHC 7898 (KLR) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E030 OF 2025
S MBUNGI, J
JUNE 3, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

WANJUSI KIMINGICHI SAKARI ACCUSED

RULING

1. The accused person, Wanjusi Kimingichi Sakari, was charged on 22.04.2025 with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. A plea of not guilty was entered. Defence Counsel, Mr. Lugadiru, made an oral application to the court, praying that the accused be released on bond on the grounds that the accused is disabled, has a fixed abode, and shall avail himself to court when so required by court.
3. Prosecution Counsel, Ms. Osoro, stated that she had no instructions to oppose bond,
4. However, Mr. Mbetera holding brief for Mr. Nyaberi for the victim's family submitted that the accused had been interfering with witnesses and such a report had been made at Matete Police Station. In rebuttal, Mr. Lugadiru submitted that no evidence had been tendered to show that the accused had been interfering with witnesses for he had been in police custody since arrest.
5. I directed that the OCS Matete Police Station avail the results of investigation done in respect to the complainant in order to enable the court to decide whether to place the witnesses in witness protection and that a pre-bail report be filed to assist the court in making its determination on bond. The same was filed on court on 9th May, 2025 by Probation Officer, Kakamega County who recommended stringent bond terms be imposed on the accused person.
6. The court's power to grant bond is provided for under Section 123 of the [Criminal Procedure Code](#), the discretion is not absolute but is informed by considerations set out under Section 123 as read with



the Bail and Bond policy guidelines and further circumstances which apply on a case to case basis. Therefore, issues for determination in the accused application are:-

- i. Whether the accused is a flight risk
 - ii. Whether the accused lacks a place of abode and cannot be traced if released
 - iii. Whether the accused security would be at risk
 - iv. Whether the accused would interfere with witnesses
 - v. Whether the conclusion in the inquest form compelling reasons to deny him bond.
7. Article 49 (1) (h) of the [Constitution](#) grants an accused person the right to be released on bond or bail on reasonable conditions pending the hearing and determination of his trial. It states as follows;
- An arrested 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.
8. Section 123A of the [Criminal Procedure Code](#) provides;
- (1) 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 or seriousness of the offence;
 - (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;
 - (2) 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;
9. The right to bail and bond is premised on the accused person's right to be presumed innocent until proved guilty as no evidence has been placed before this Court yet on their culpability and the accused person's right to liberty. In deciding whether or not to grant bond, the court is guided by the following principles:-
- (a) The right of the accused to be presumed innocent.
 - (b) The accused person's right to liberty.
 - (c) The accused's obligation to attend trial.
 - (d) The right to reasonable bail and bond terms.
 - (e) That bail determination must balance the rights of the accused persons and the interest of justice.
 - (f) Consideration of the rights of the victims



10. The Court has discretion to grant or refuse bail depending on the circumstances of each case. The Court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case.
11. In *Republic Vs. William Mwangi Wa Mwangi* [2014] eKLR, Muriithi, J held that:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail...It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”
12. Similarly, in the case of *Kelly Kase Bunjika v Republic* [2017] eKLR the Court had this to say: -

“It is clear that the primary consideration for bail is whether the accused will attend his trial for charges facing him and it must therefore be a compelling reason if it is demonstrated that the accused person is likely to fail to attend court proceedings. The question in this matter becomes whether there is on a balance of probabilities evidence that the accused is likely to abscond.”
13. In *Nyeri High Court Criminal Case No. 8 of 2016 Republic vs Danford Kabage Mwangi* the criteria or compelling reasons to consider in the exercise of judicial discretion in bail applications were set out to include:
 - i. The nature of the charges.
 - ii. The strength of the evidence.
 - iii. The gravity of the punishment in the event of conviction.
 - iv. The previous criminal record of the accused, if any.
 - v. The probability that the accused may not surrender himself for trial.
 - vi. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.
 - vii. The likelihood of further charges being brought against the accused.
 - viii. Detention for the protection of the accused.
14. A pre-bail report acts as a guide to the Court when considering the suitability of an accused person whether to be released on bail and/or bond. However, the pre-bail report is not the final say.
15. According to the Pre-bail report on record, the accused person, Wanjusi Kimingichi Sakari, is a 59-year-old former clerical officer in the Office of the President and currently a self-employed informal language tutor. He has no known history of criminal behaviour or antisocial tendencies. However, the report reveals that the accused hails from a fragmented family background. His biological parents are both deceased, and although he has several biological and step-siblings, his relationships with them appear strained. The family resides in an extended family setting in the village, but there is minimal emotional or practical support for the accused. Since his incarceration, his family has not visited him, nor did they respond to attempts by the probation office to engage them, raising concerns about their willingness to stand surety or be involved in his legal process.



16. Additionally, Wanjusi has no permanent residence in the village, as family land is still under succession. His adult life has primarily been in Nairobi, and his ties to the rural home are weak. He is currently without a verifiable source of income, and his wife, who used to run a chemist in Juja, is also unemployed following the economic impacts of the COVID-19 pandemic. Although described as calm and articulate, Wanjusi's social integration is limited both in his rural and urban environments.
17. In relation to the concerns of the victim's family, who are the secondary victims in this case (the deceased being the accused's nephew), they expressed deep emotional distress, citing confusion, betrayal, and grief, particularly because there had been no visible signs of prior conflict. The family reported that the accused threatened them in the presence of the local administration following the incident, raising serious concerns for their safety should he be released on bond. While they are not entirely opposed to bail, they requested that it be deferred until all key witnesses have recorded statements to safeguard the integrity of the trial.
18. Having carefully considered the submissions by all counsels, the contents of the pre-bail report, and the applicable legal principles, the Court finds that while the accused, Wanjusi Kimingichi Sakari, faces a grave charge of murder, the Prosecution has not presented compelling reasons to deny him bail.
19. The pre-bail report indicates that the accused hails from a fragmented family background and lacks strong social ties. No one in his family has expressed willingness to stand surety, and there are concerns about his reintegration into the community since he is not well known within his local community and has not been active in communal, religious, or social circles. A visibly emotional and angry crowd gathered upon his arrest, reflecting heightened community hostility, which presents a potential risk to his own safety and to local peace if released on bond.
20. However, these factors, while noteworthy, do not, in themselves, constitute compelling reasons to deny bail. The right to bail is a constitutional right under Article 49(1)(h) of the Constitution, which stipulates that 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 as was held in the case of *Republic v William Mwangi Wa Mwangi* [2014] eKLR:

“It is now settled that in the event that the State is opposed to the grant of bail to an accused person, it has the onus of demonstrating that compelling reasons exist to justify denial of the constitutional right to bail.”
21. This principle underscores the necessity for the Prosecution to provide substantial justification for denying bail, which has not been sufficiently demonstrated in the present case. Further, the security of the accused person starts with him. The accused person has not expressed to the court any fears of his security, if released on bond.
22. Similarly, in *Kelly Kases Bunjika v Republic* [2017] eKLR, the Court emphasized that the primary consideration for bail is whether the accused will attend his trial. The Court stated:

“It is clear that the primary consideration for bail is whether the accused will attend his trial for charges facing him and it must therefore be a compelling reason if it is demonstrated that the accused person is likely to fail to attend court proceedings.”
23. In the current matter, there is no evidence presented to suggest that the accused is a flight risk or that he will fail to attend his trial. There is no indication that the accused has a history of failing to attend court since he has no known previous criminal record.



24. On the issue of witness interference, this court directed the Officer Commanding Station (OCS) Matete Police Station to file a report regarding allegations that the accused had threatened witnesses, in order to assess whether any prosecution witnesses require protection. However, as of the date of this ruling, the OCS has not complied with the said directive. In the absence of such a report and in light of the accused having been in custody since his arrest, the Court is left without credible evidence of any active interference with witnesses by the accused. Allegations alone, unsupported by investigative findings or an affidavit from investigating officers, do not rise to the level of compelling reasons to deny bail.
25. In *Republic v Danson Mgunya & Another* [2010] eKLR, the Court held:
- “Allegations of interference with witnesses must be proved by way of evidence or supported by affidavit. Mere allegations, without substantiation, are not sufficient to deny a constitutional right.”
26. Furthermore, in *Republic v Richard Muthui* [2021] eKLR, the Court noted:
- “The prosecution must demonstrate a real likelihood of witness interference, not just a theoretical possibility. Any such risk must be supported by factual material before the court.”
27. Accordingly, while the concerns raised by the victim’s family are noted and not taken lightly, the failure by the investigating officer to comply with court directions undermines the weight of such concerns. The Court is not satisfied that there exists a proven risk of interference with witnesses warranting a denial of bail at this stage.
28. While the accused’s family is reluctant to stand surety, this does not preclude the possibility of other suitable sureties being found. Considering the above, the Court finds that the concerns raised can be mitigated through the imposition of stringent bail conditions.
29. Paragraph 3.1. (d) of the Bail and Bond Policy Guidelines (at page 9) provides that:
- d) ...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.
30. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person.
31. Having considered the circumstances of the case, the gravity of the offence and the pre-bail report, I order as follows:
- I. The accused be released on a bond of Kshs.500,000/- with one surety of a like sum.
- II. To balance out the interests of parties, The accused person is barred from contacting witnesses either directly or indirectly.



III. The accused shall attend all scheduled court sessions without fail. Failure to comply shall lead to cancellation of bail and immediate remand.

32. Hearing on 9.9.2025

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3RD DAY OF JUNE, 2025

S.N MBUNGI

JUDGE

In the presence of :

Accused- Absent.

Court Prosecutor- Ms. Osoro

Court Assistant – Elizabeth Angong'a

Lugadiru for the accused present online.

