



REPUBLIC OF KENYA



KENYA LAW
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**Githinji v Republic (Criminal Revision E017 of 2023)
[2025] KEHC 8549 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8549 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E017 OF 2023
LN MUTENDE, J
JUNE 10, 2025**

BETWEEN

MARY WAIRIMU GITHINJI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Mary Wairimu Githinji, the Accused is indicted for Murder following allegations of having committed an act that resulted into the demise of Esther Wanjiru Wachira on 2nd July, 2023.
2. Through a Notice of Motion dated 2nd April, 2025, she seeks to be released on bond pending trial on reasonable and favourable terms.
3. The substratum of the application is that; the Accused has constitutional right to liberty and presumption of innocence until proven guilty; she is willing to abide with any condition, to be imposed upon release; and she has a medical condition that needs specialized medical care and treatment outside of custody to be considered as a compelling reason for release on bond.
4. Further, it is stated that the Accused's continued detention before the trial prejudices the Applicant's right to fair treatment and violates the presumption of innocence; the Accused has a fixed place of abode and strong family ties; she has no history of absconding court or interfering with investigations, she suffers from a diagnosed mental health condition requiring continuous and specialized medical care.
5. That prolonged detention exacerbates her condition, hindering her ability to effectively prepare her ability to effectively prepare her defence and further endanger her physical and emotional wellbeing. That her husband has expressed willingness to secure an alternative residence for her therefore addressing any community concerns regarding her release which will mitigate any perceived risks and also provide a stable environment for her.



6. That a suitable surety has been identified who is willing to stand surety for the Accused; the Accused requires structured psychosocial support which can be better provided outside prison, strict reporting conditions and regular medical checkups can be imposed to ensure compliance with medical prescriptions and treatment.
7. That the duration the accused has been in pre-trial detention have caused her irreparable emotional, physical and psychological harm exacerbating her mental health condition and that the matter has delayed in being finalized.
8. The State opposed release of the Accused on bail and sought filing of a pre-bail report. It was urged that compelling reasons exist requiring denial of the Accused bail including the need to protect victims of the crime as she had attempted to murder her son who is still traumatized.
9. According to Section 9 of the *Victim Protection Act*, victims are entitled to have their views considered at all stages of proceedings. Based on law this court caused pre-bail report to be filed which captures views of the secondary victims.
10. The Accused's right to bail pending trial is guaranteed by the *Constitution* and can only be limited where existence of compelling rights requiring his/her incarceration exist.
11. Article 49(1) (h) of the *Constitution* provides that;
 - (1) 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.
12. Compelling reasons are neither defined by the *Constitution* nor Statute but through case law such reasons are stated to be persuasive, convincing or forceful grounds that are proved beyond reasonable doubt. In *Republic v Joktan Maende & 3 others* [2012] KEHC 5551 (KLR) the court held that;

“.....The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the *Constitution*.”
13. The *Judiciary Bail and Bond Policy Guidelines*, 2015, pg. 25 sets applicable procedure to the question of bail. It provides for circumstances under which an Accused may be denied 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:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or



- c. That the exception to the right to bail stipulated under Section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e. That the accused person is likely to interfere with witnesses or evidence; or
- f. That the accused person is likely to endanger national security; or
- g. That it is in the public interest to detain the accused person in custody.”

14. The principle of presumption of innocence of the Accused is upheld by the *Constitution*.

15. Section 123 A 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 fulfillment 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;
 - b. Should be kept in custody for his own protection.

16. In *Republic v Richard David Alden* [2016] KEHC 4246 (KLR) it was stated that;

“Under the guidelines the general principles which apply to questions of granting or denying bail or bond are also set out and these include the right of the accused to be presumed innocent; accused right to liberty; accused obligation to attend court; right to reasonable bail and bond terms; bail determination must balance the rights of the accused persons and the interest of justice and considerations of the rights of the victims.”

17. In this case the defence emphasizes the fact of the case having delayed and in particular that there have been multiple mentions and adjournment spanning to over 21 months, delay that is argued to inflict irreparable psychological and emotional harm on the Accused (Applicant) thus violating her constitutional right to a fair and speedy trial.



18. Notably, the Accused was arraigned on 10th July, 2023 before Kariuki J. Upon being subjected to mental assessment she was found fit to plead and the information framed by the Director of Public Prosecutions was read to her on 29th March, 2024 by Ndung'u J who granted the probation office 21 days to file a pre-bail report. On 25th September, 2024, Mr. Muchangi for Accused made an application for her committal to Mathari Mental Hospital for 3 months and Ndung'u J scheduled the matter for mention on 22nd October, 2024.
19. Subsequently, when the matter came up on 31st May, 2024 Mr. Muchangi proposed that the Accused undergoes trial while at Mathari Hospital an application that was opposed by Mr. Obutu learned prosecution counsel who argued that a person suffering from mental illness had to be taken for treatment. In the result, the court made an order for committal to the mental hospital for a period of 3 months. However, the Accused remained under medical observation until 26th February, 2025 when a favourable report was filed by Doctor Faith Muhindi, Consultant, Psychiatrist hence the information being read to her on 27th February, 2025 and she denied the charges.
20. Section 162 of the [Criminal Procedure Code](#) provides thus;
 - (1) When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.
 - (2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.
 - (3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.
21. This provision of law addresses the procedure to be followed when an accused person is suspected to be of unsound mind. This is a case where indeed the Accused was found to be incapable of making a defence, she could not have participated effectively in the trial hence the order made in postponing proceedings was appropriate but not a delay as argued.
22. On the subject matter of release on bail, the Accused who is presumed innocent could be released on bail as long as there is sufficient security such that she will be taken care of and not cause harm to either herself or other people.
23. To establish this fact this court sought the input of a social officer. It is argued that the Accused has a fixed place of abode and has no history of absconding bail and hence not a flight risk. According to the report filed by the probation officer, the Accused has been on psychiatric medication for long and has been relapsing whenever she forgets to take the medicine which requires close monitoring and supervision such that if not well managed court attendance will be affected. While in prison she has adhered to medication intake hence stabilizing.
24. Her husband David Githinji Karuku on being interviewed was not sure of where to settle the Accused upon release as he does not have a property of his own. That he shares a plot with other tenants hence afraid that the Accused's return in the same place might spark fear among tenants, therefore he is comfortable to continue supporting the Accused while in prison to prevent recurrence of the offence.
25. Her maiden family is unwilling to process the question of bail. The primary victim was the mother of the Accused and the family is still in shock following the ordeal hence still grappling with fear.



26. The primary consideration on the question of releasing the Accused on bail is balancing between the right of the Accused to liberty and the need to protect her and also the public to ensure the integrity of the judicial process. From the foregoing the Accused connection to her nuclear family and maiden one is not stable hence the possibility of being a flight risk. Her release may also pose a threat to the safety of individuals and the community at large.
27. It is apparent that the Accused requires a conducive environment and psychosocial support to ensure she adheres to medication intake to prevent relapse conditions that are only available in the remand custody. Therefore, at this stage bail is denied until circumstances change.
28. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF JUNE, 2025.

L.N. MUTENDE

JUDGE.

