



**Republic v Mazingira (Criminal Case E055 of 2021)  
[2025] KEHC 9347 (KLR) (Crim) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9347 (KLR)

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

**CRIMINAL**

**CRIMINAL CASE E055 OF 2021**

**MW MUIGAI, J**

**JUNE 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HASSAN OMAR MAZINGIRA ..... ACCUSED**

**RULING**

**Bail/bond Application**

1. The Accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offence are that on the night of 29/7/2021 at Bondeni within Mathare 3A area, Mathare Sub -County within Nairobi County jointly with others not before Court, murdered Peter Musyoka alias Kamwana.
3. The mental assessment report confirmed the Accused person fit to plead.
4. The charge/information was read to the Accused person and he pleaded not guilty.
5. The matter commenced hearing and to date 7 witnesses have testified.
6. The Accused applied to be released on bail/bond having been in custody since 2021. On 19/8/2021, the Trial Court about to grant bond ODPP sought 14 days to file Affidavit to oppose release on bond/bail.
7. The Affidavit to oppose Bond was filed on 14/9/2021 by Corporal Nicholas Chigiri of DCI Starehe. On 18/7/2024. ODPP decided to withdraw Affidavit opposing bond/bail release for the Accused person.



8. On 4/3/2025, ODPP informed Court the matter proceeded before HonLJ L.Mutende and 5 witnesses testified. Counsel for the Accused person informed Court that the Probation Officer who was to prepare Bail Report reached out to her to reach out to relatives of the Accused person and they could not trace them. The Court stated that everyone is from somewhere, known /by a family member, Community leader, local Administration, a Colleague, neighbour etc. The Probation Officer was granted more time to avail the Pre-Bail Report.
9. Section 200CPC was read to the Accused person in Kiswahili to state how he wanted the matter to proceed and he opted to proceed from where the matter stopped. Typed proceedings were to be availed to ODPP & Defense and Bail Renewal Application to await the Pre-Bail Report by Probation Officer.
10. On 26/05/2025 Counsel for the Accused person Ms Kiombe made the application for bail/bond for the Accused person. Counsel, relied on Article 49of Constitution 2010 and the presumption of innocence of the Accused person and that the Accused person is aware of the seriousness of the crime and he is a 1<sup>st</sup> offender no previous history of skipping bail/bond terms. He is not a flight risk. Prior, to his arrest he lived in humble abode in Mabindoni. He has strong social ties He has a young family 2 children aged 5 yrs and 2 yrs. The Accused person undertakes to abide with all conditions of bail/ bond terms by the Court and he should be released on reasonable bail/bond terms in line with the Pre-bail Report filed on 9/12/2024.
11. Ms. Tum representing ODPP objected to release of bail/bond of the Accused person on grounds that Bail and Bond being a Constitutional right it is not automatic where there are compelling reasons and where rights of Accused person must be considered alongside interest of justice. The Accused person is a flight risk and no details of Accused person's fixed abode. On 20/8/2021, the Accused person had no Identity card and the names used during his arrest were not his true names and any attempt to unravel the Accused person's true Identity proved difficult.The names used are Hassan Omar Mazingira alias MuCoasti alias Alfred Ochieng the Prosecution is not sure of his true identity.Further, there has not been shown any change in circumstances to warrant review of bond/bail application.
12. It is these compelling reasons that they prayed that the application is disallowed.
13. The Accused person's lawyer made no rebuttal or comment.

### **Analysis & Determination**

14. Bail is a constitutional right enshrined in Article 49(1)(h) of *the Constitution*. The test the Court is required to use to deny bail in appropriate cases is similarly stated in Article 49(1)(h) of *the Constitution* that it is only upon the Prosecution (ODPP) showing of compelling reasons that the Court will deny bail. Section 123,123A & 124 of the CPC prescribe the relevant circumstances the Court should take into account and process of granting bail or bond.
15. The Bail & Bond *Policy Guidelines of 2015* stipulate the factors that are considered in deciding to grant or not grant bail or bond to the Accused person. Current practice on application of bail or bond is informed by such factors as:

Nature of the charges, seriousness of the punishment; strength of prosecution's case.; character and antecedents of the accused; failure of accused to honor bail terms previously, likelihood of interfering with witnesses; need to protect the victim of crime and accused person; relationship between the accused and potential witnesses; age of accused if the Accused is a child/young offender; whether Accused person is a flight risk; whether accused



person is gainfully employed; maintenance of public order, peace or security and protection of the Accused person.

16. Two examples of cases in which bail was granted to persons charged with murder are as follows;
  - (i) Republic Vs Danson Mgunya & Another (MSA) H.C. CR. C. NO. 26 OF 2008; ‘liberty of each person is precious ....We must interpret *the Constitution* in enhancing the rights and freedoms granted and enshrined, rather than in any manner that curtails them. Each case must be decided in its own circumstances touch and context.’
  - (ii) Republic Vs Oby Tylene Oyugi & 11 Others (Nyeri) H.C. CR. C. NO. 38 OF 2010.  
‘It is now well settled that the court’s main consideration, when determining an application for bail pending trial is whether or not the accused person will voluntarily and readily present himself to the trial court.’
17. This Court recognizes the right to bail and bond enshrined in *the Constitution* but the grant of bail and bond is considered alongside circumstances of each case. In the instant case, the Accused person’s identity and person are contested unconfirmed and doubtful. The Affidavit to oppose bail/bond and ODPP’s submissions point to aliases to the Accused person’s names, no official document was presented to identify him Identity card, birth certificate, school certificate, passport, child vaccination card or any local administrator, Chief, Nyumba Kumi elder, Mzee wa Kijiji vouched for his abode, character and /or activity, employment.
18. The Court file contains Affidavit to oppose bail the main reason being the Accused is a flight risk, identity not confirmed no fixed abode and no family ties.
19. The Accused person’s advocate informed this Court on 4/3/2025 that the Accused person’s family could not be traced but 26/5/2025 relied on the Pre-bail Report filed on 9/12/2024. It means logically and reasonably inferred that no family was traced to be interviewed for a current and present application for bail and bond and this Court was asked to use/deal with the report filed prior.
20. Be that as it may, the Pre-Bail Report filed on 9.12/2024’ disclosed the following;
  - a. The Accused person’s sister Rose Zainabu during interview could not confirm the Accused’s family background
  - b. The Accused was interviewed and referred to family as Rose Zainabu sister, brother- in- law (no name) husband to sister Kabos Kenga were not ready to give any information
  - c. Rose Zainabu on 1<sup>st</sup> interview denied knowing the Accused person and the Accused person’s name she did not know and she refused to be the contact person.
  - d. The family the Accused alleged to have a family, wife Wilkister Nekesa Baraza 2 children aged 5 & 3 years respectively Tarik Omar & Leila Hassan who lived in Kibera, the contact phone number was no longer in service.
21. For the matters considered above, and taking into account the nature of the charges and seriousness of the punishment, the Accused person is a flight risk as his identity is not confirmed family and abode are denied or contacts refused to commit or disclose or be held as contact persons.



**Disposition**

22. For now, bail bond Application is denied to be renewed upon establishment of identity and person through official original documents and physical address of fixed abode, real family and contact person(s) confirmed through the Local Administration.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT IN NAIROBI CRIMINAL DIVISION ON 23/6/2025**

**M.W.MUIGAI**

**JUDGE**

