



Republic v Mwangi & another (Criminal Case E005 of 2024 & E008 of 2025 (Consolidated)) [2025] KEHC 8883 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E005 OF 2024 & E008 OF 2025 (CONSOLIDATED)
FN MUCHEMI, J
JUNE 19, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MARTHA WANJIKU MWANGI 1ST ACCUSED

REGINA WANJIRU MUTHUI 2ND ACCUSED

RULING

Brief Facts

1. This is a ruling on release on bail for the 2nd accused person. The 2nd accused and her co-accused, the 1st accused person face a charge of murder contrary to section 203 as read with 204 of the *Penal Code*. The particulars of the offence are that on the 8th day of February 2024 at Nyacaba sub location within Juja Sub County Kiambu County jointly murdered Jackline Kathuri Kagwiria. On 10th December 2025 the accused persons pleaded not guilty to the charge. The court granted the 1st accused bond of Kshs. 1 million and two sureties of similar amount in criminal case No.E005 of 2024 where he was initially charged separately before it was consolidated with Cr. E008 of 2024 with E005 of 2024 being the lead file
2. The prosecution filed an Affidavit of Compelling Reasons labelled an Affidavit in Opposition to Bond, in respect of the 2nd accused person, dated 10th March 2025 sworn by Cpl Vincent Njoroge who is the investigating officer in the instant matter. He deposes that the 2nd accused person is a flight risk as he managed to arrest her one year after the incident occurred as she was in hiding. The investigating officer is apprehensive that if the 2nd accused person is released on bail or bond she will abscond and he will not be able to trace her. The Officer further avers that he does not know her family background or rural home and may not be able to trace her if she absconds.



3. In opposition to the Affidavit in Opposition to Bond, the 2nd accused person filed a Replying Affidavit dated 2nd April 2025. and 31st January 2025 respectively. The 2nd accused person avers that her father is ready and willing to surrender a Title Deed to secure her release and further she is ready and willing to report to the police station to comply with any terms attached to the bail or bond. The 2nd accused person states that she is not a flight risk as she does not have a passport. She further states that in the year 2023 to 8th February 2024 she used to trade at Nyacaba when the incident happened at which time she travelled to Nyahururu to visit her parents. In August 2024, the 2nd accused person states that she returned to her home in Kiambu at Kirigiti where she stayed and was arrested from. The 2nd accused person avers that during that period she neither received summons to appear at any police station nor was her husband called or summoned to give information of her whereabouts.
4. The 2nd accused person urges the court to grant her reasonable bail or bond to enable her take care of her three children. The 2nd accused person further states that she is a first offender and she will not interfere with the investigations or witnesses if released on bail or bond.
5. Parties put in written submissions.

The Prosecution's Submissions

6. The prosecution relies on Article 49(1)(h) of the *Constitution*, Section 123A of the *Criminal Procedure Code*, the *Bail and Bond Policy Guidelines* and the case of *Michael Juma Oyamo & Another v Republic* [2019] eKLR and submits that the prosecution has presented compelling reasons to warrant the denial of bail or bond to the 2nd accused person. The prosecution submits that the 2nd accused person is a flight risk because after the murder incident, she went into hiding and was arrested after one year. Further the 2nd accused person's family background or rural home is not known and if she absconds she may not be traced.

The 2nd Accused Person's Submissions

7. The 2nd accused person relies on Article 49(1)(h) of the *Constitution* and the case of *Dominic Inziani v Republic* [2021]eKLR and submits that the strength of a case does not prevent a court from awarding bail or bond to an accused person. The 2nd accused person further submits that she did not abscond or intentionally evade arrest. Further, the prosecution did not provide any summons to show that they sent it to her or her family. Additionally, the 2nd accused person submits that her parents have a permanent residence a few metres from where the incident took place and her siblings stay there as well. The 2nd accused person relies on the case of *Republic v Daniel Musyoka Muasya & 2 Others* [2010] KEHC 231 (KLR) and submits that mere allegations of being a flight risk do not in themselves constitute compelling reasons unless supported by concrete evidence of intent to obstruct justice.
8. Relying on the case of *Republic v Francis Kimathi* [2017] eKLR, the 2nd accused person submits that the prosecution has not given any compelling reasons to warrant her denial of bail or bond. The 2nd accused person submits that the prosecution has not demonstrated through evidence that she will abscond trial.

The Law

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

9. 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.
10. 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.
11. 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.”
12. In [Republic v 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 v 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.”
13. The issue that arises is whether the reasons adduced by the prosecution are compelling reasons under Section 49(1) (h) of the Constitution for this court to deny to grant bail pending trial to the accused.
14. The prosecution has argued that the 2nd accused person is a flight risk and may abscond if released on bail or bond.
15. In regard to the allegation of absconding or going into hiding after the commission of the offence, the prosecution did not file an affidavit in support. On the other hand, the accused person swore an affidavit stating that she resides at Kirigiti Kiambu County where she was arrested. There was no further affidavit to refute the averments of the 2nd accused. In the case of R v 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.
16. The prosecution in my view, has failed to present any cogent evidence to support the allegations that the 2nd accused is a flight risk. Having carefully considered the grounds relied on, it is my view that the reasons given do not pass the test set out under Article 49(1)(h) of the Constitution.
17. Accordingly, I am of the considered view that the prosecution has not proved on a balance of probabilities that there are compelling reasons to warrant the denial of bail.
18. I therefore order that the 2nd accused be released on a surety bond of KSh.1,000,000/= and order that she will not leave the jurisdiction of this court without its permission.
19. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATEF AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

F. MUCHEMI

JUDGE

