



**Republic v Gitonga (Criminal Case E097 of 2021)  
[2025] KEHC 9709 (KLR) (Crim) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E097 OF 2021  
MW MUIGAI, J  
JUNE 11, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**FRANCIS KINYUA GITONGA ..... ACCUSED**

**RULING**

1. The Accused person was charged with the offence of murder contrary to Section 204 of the [Penal Code](#). The particulars of the offence are that on 5/8/2019 at Kasarani Sub County within Nairobi area the Accused person with another [not before Court] murdered Jeremiah Ndungu Njuguna. The charge/information was read to the Accused person and he pleaded not guilty.
2. Thereafter, the Applicant filed Notice of Motion under Certificate of Urgency and sought to be released on reasonable bond terms pending hearing and determination of the case.
3. The Application was heard before Hon. LJ D. Chepkwony and delivered Ruling on 21/10/2022 whose import was that compelling reasons were established by ODPP through Affidavit filed by I/O. The accused did not have fixed abode. However, 'on the probability of the hearing taking long to be concluded, [the Court] directed the Applicant avails a Contact person who should in turn File an Affidavit detailing full particulars being identity, occupation, place of residence for himself /herself and Accused person'
4. The Accused person's original court file was lost, misplaced, not traced or destroyed. After spirited efforts Counsel for the Accused pursued reconstruction of the Court file and Skeleton file was opened and copies of documents and Statements and Reports were filed.



5. The Accused person/Applicant renewed application for release on reasonable bail and bond terms and in the Supporting Affidavit averred that he now had fixed abode given that he was living with his mother at Kasarani within Nairobi County prior to his arrest and she swore Affidavit of 11/1/2023 and confirmed she was willing to live with her son and willing to be his surety and therefore there were no compelling reasons to deny him bail/bond.
6. The Court Hon.LJ D. Kavedza on 24/10/2023 delivered Ruling found that the Accused person was on the run since August 2019 and was arrested on 11/12/2021, a period of 2 years and 4 months, by Police Officers on a tipoff while on patrol that 6 young men were mugging Sunton Area residents.
7. The accused person relocated elsewhere, shaved his dreadlocks, switched off phones leaving no trace of his whereabouts. The Court found the accused person was on the run and therefore a flight risk and he had no fixed abode as he seemed akin to a free bird able to relocate at will. The hearing had not taken off since December 2021, the Court file lost, reconstructed by Prosecution and Defense Counsel. The Court provisionally denied the grant of bail and bond until 4 witnesses testified. If however, within 2 months, no witness testified the Accused person was at liberty to apply for review of the orders of the Court. By application filed on 17/1/2025, the Applicant Francis Kinyua Gitonga sought to be released on reasonable bail/bond terms pending trial. The applicant relied on grounds that he has been in custody since 11/12/2021 to date.
8. The Application is based on the 2 Rulings high lighted above , the fact that the hearing has never commenced no witness has testified and delay of trial cannot be attributed to the Applicant. The Accused person has been in custody for 4 years. The accused person's rights are infringed and intervention of this Court is sought to revise the orders.
9. The continued detention of the Accused person is both unjust and prejudicial to him and contrary to Article 50(2) (e) of Constitution, fair hearing within reasonable time has not been complied with.
10. Court Proceedings of 16/01/2025, the ODPP requested to be served with the Application of 17/1/2025 so as to file response. The ODPP also reiterated that there were 2 Rulings on bail and bond dealt with the fact that there were compelling reasons to withhold grant bail/bond. Secondly, the original Court file was lost until the skeleton file was reconstructed.
11. On 22/01/2025, the copies of the 2 Rulings were availed to Court and ODPP was to file Response to the instant Application. On 15/5/2025 ODPP sought more time to file Response. By the time of the present Ruling ODPP did not file any response save for pleadings earlier.
10. 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.

These factors were considered resulting in the 2 Rulings above.
11. A review of these orders is due to new developments and only applied in light of all circumstances surrounding the case. The nature of the charge/offence is murder and is serious, the Accused person was found to be a flight risk, as he absconded from area of residence



- Our Courts have previously held that where there is more than speculative apprehension that
12. An Accused Person could inflict genuine fear and anxiety in potential witnesses, the Courts ought to consider that as a factor in denying bail. (See R v Joseph Wambua Mutunga & 3 Others [2010] eKLR.)
  13. 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): it is only upon the showing of compelling reasons by the Prosecution that the Court will deny bail. Section 123 & 123A of the CPC and Bail & Bond *Policy Guidelines of 2015* provide guidance on consideration of bail & bond Application.
  14. Article 49(1)(h) of *the Constitution* grants bail for all offences, the gravity of the offences notwithstanding. That the presumption of innocence is enshrined in Article 50(2) of *the Constitution*. Section 123 of the *Criminal Procedure Code* allows the accused person to request for bail, and the court to grant it. These provisions do not limit the number of times request for bail or bond may be made as was stated in Republic vs Ahmad Abolafathi Mohammad & Anor 2013 eKLR.
  15. There is need to protect the 4 witnesses that were/are to testify before review of bail and bond application is review is filed heard and determined. The Applicant disappeared from area of residence after the offence occurred and was arrested 2 years later and the Co suspect is still at large from the Particulars of the offence. The circumstances explained in Pre-Bail Report and Investigation Officer's Affidavit have not changed as of now. The issue of Accused's mother filing Affidavit to be surety seemed to have been rejected vide the 2<sup>nd</sup> Ruling.
  16. Therefore, review of bond shall be considered upon ODPP expediting the hearing and have the protected witness(es) testify first. That the hearing has not happened yet and no explanation has been given by ODPP on any challenge to expedite hearing of the matter. The ODPP has not presented any challenge in availing witnesses except that the Court file was lost but in the interest of justice, grant of bail/bond cannot be withheld and at the same time stall the hearing.

**Disposition.**

1. The bail /bond review application is withheld for now to allow testimonies of 4 witnesses to be taken.
2. Thereafter, the bail /bond Application shall be considered as at this stage it is deemed premature.

**RULING DELIVERED SIGNED & DATED IN OPEN COURT CRIMINAL DIVISION NAIROBI  
ON 11/6/2025 VIRTUALLY/PHYSICALLY.**

**M.W. MUIGAI**

**JUDGE**

