



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Rowlings (Criminal Case E010 of 2025)  
[2025] KEHC 8111 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8111 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL CASE E010 OF 2025  
FN MUCHEMI, J  
JUNE 5, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HENRY ROWLINGS ..... ACCUSED**

**RULING**

1. The accused person was charged with murder contrary to section 203 as read with 204 of the [Penal Code](#). The particulars of the offence are that on the 6<sup>th</sup> day of February 2025 at Thome Area, Gwa Kairu within Juja Sub County, Kiambu County murdered Scholastica Nyahiri Mwita. On 1<sup>st</sup> April 2025, the accused person pleaded not guilty.
2. The prosecution filed an Affidavit of Compelling Reasons which is labelled an Affidavit in Opposition to Bond dated 1<sup>st</sup> April 2025 sworn by IP Jairus Mbondo who is the investigating officer in this matter. He deposes that the accused person will interfere with the witnesses since they are his friends. The accused person will compromise with the said witnesses who may not be able to testify independently. It is further deponed that the accused person is a flight risk as he has no fixed abode and he may go into hiding. The deponent is apprehensive that if the accused person is released on bail, the residents of Gwa Kairu will retaliate as tension and hostility is still high.
3. The accused person filed a Replying Affidavit dated 5<sup>th</sup> May 2025 and states that bail/bond is a constitutional right guaranteed under Article 49(1)(h) of [the Constitution](#) of Kenya. The accused person contends that the affidavit of compelling reasons does not adduce sufficient grounds to deny him bond and is therefore unmerited. The accused person states that he has no intention of harming or interfering with any of the witnesses and he does not know them neither are they his friends. The accused person further avers that the prosecution has not demonstrated how he will compromise the witnesses.



4. The accused person states that he has a permanent residence at Kayole well known to the police as attested by No. 85082 PC Patrick Gatua's statement, who arrested him at his house and recovered his identity card and personal items in his house. The accused person states that he is a casual worker with a single mother, working in construction sites and jua kali stores with an average daily income of Kshs. 300/-.
5. The accused person states that he is willing and able to report to Kasarani Police Station specifically to the Officer Commanding Station (OCS) every 7 days or as the court may direct.
6. Parties put in written submissions.

#### **The Prosecution's Submissions.**

7. 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 accused person. The prosecution submits that the accused person shall interfere with the key prosecution witnesses as some of the said witnesses are known to him and therefore they will not be able to freely give their testimony on what led to the culmination of the case.
8. The prosecution submits that the accused person is a flight risk as his fixed abode has not yet been established thus posing a danger of him absconding court if released on bond. The prosecution further submits that tension and hostility is still high where the incident occurred and the locals of the village and family members of the victims may retaliate if the accused person is released on bond. Thus, the accused person's life would be in danger if released on bail/bond and pursuant to Section 123(2)(b) of the *Criminal Procedure Code* and paragraph 4.9 of the Bail and Bond Policy Guidelines recognizes safety or protection of the accused as a compelling reason.

#### **The Accused's Submissions.**

9. The accused relies on Article 49(1)(h) of *the Constitution* and the Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 and submits that the admission to bond is a right preserved under the law unless compelling reasons are presented by the prosecution to warrant the denial of the accused person to bond terms.
10. The accused person submits that the prosecution has not adduced any evidence to back up the claims contained in the affidavit of compelling reasons. The accused person relies on the cases of Republic v Ngari & Another (Criminal Case E012 of 2023) [2023] eKLR and Republic v Wanjiku & Another (Criminal Case E002 of 2024) eKLR and submits that the prosecution has not provided by way of affidavits or other evidence that he will interfere with the prosecution witnesses.
11. The accused person further submits that he has been residing in Kayole Eastlands where he was arrested and he has roots within the slum community. Further he argues that the law does not require permanent residence for bail only sufficient ties to ensure court attendance. The accused person submits that the prosecution has not demonstrated any actual threats from the public. He says he lives in Kayole over 100km away from Gwa Kairu where the incident occurred. The accused person submits that he is willing to relocate if necessary and the court can bar him from visiting Gwa Kairu as a bail condition.



## The Law

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

12. 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.

13. 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.

14. 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.”

15. 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;

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The likelihood of the accused interfering with prosecution witnesses.”

16. The issue that arises is whether the reasons adduced by the prosecution are compelling reasons such that the court should not grant bail pending trial.
17. The prosecution has argued that the accused person is a flight risk as his permanent place of abode is unknown and that he is likely to interfere with witnesses. The prosecution further states that tension and hostility is still high at Gwa Kairu area where the incident took place.
18. Except stating that there is tension and hostility at Gwa Kairu area and that the accused person’s life is at risk, the prosecution did not demonstrate through evidence that that is the prevailing situation. The allegations that the accused person is a flight risk and that he is likely to interfere with witnesses are not supported by any evidence and amounts to speculation. 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*.
19. The prosecution in my view, has failed to present any cogent evidence to support the allegations in the affidavit of compelling reasons. 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*.
20. Accordingly, I am of the considered opinion that the prosecution has not proved on a balance of probabilities that there are compelling reasons to form a basis for denial of bail in respect of the accused.
21. I hereby direct that the accused person be and is hereby released on bail pending trial on the following conditions: -
  - a. Bond of KSh.1,000,000/= with one suitable surety of alike amount.
  - b. He shall not visit Gwa Kairu area, Juja sub-County, Thika County or interfere with any witness during the case for such non-compliance shall lead to cancellation of bond.
  - c. That he will not leave the jurisdiction of the court without its permission.

It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**F. MUCHEMI**



**JUDGE**

