Muthondu v Republic (Criminal Case E009 of 2025)
[2025] KEHC 10546 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10546 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL CASE E009 OF 2025

TW OUYA, J

JULY 17, 2025

BETWEEN

STANELY GATHURU MUTHONDU ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The accused, Stanley Gathuru Muthondu is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. It is alleged that on the 28th March at , at Kimandi Market, MKimandi sub-location within Murang'a county, the accused murdered Peter Kamande Njoroge.

2. The records of this court reveal that the accused was arraigned before this court on 14th May 2025, for plea taking. He could however not take plea on the said date, as a mental assessment report from Murang'a Level 5 Hospital dated 30th November, 2022, indicated that he was not mentally fit to stand trial.

3. However, on the 21st May, 2025, the accused was finally declared fit to stand trial and, on the 26th May, 2025, he was arraigned before this court for plea taking where he denied the charges. His learned counsel, Mwangi Wanjiku, then made an oral application to have the accused admitted to bond pending his trial. This court however gave directions that the accused through his learned should make a formal application to be admitted to bail or bond pending his trial.

4. The accused then approached this court vide a Notice of Motion dated 10th June, 2025, seeking to be released on bail or bond on reasonable terms pending the conclusion of his trial, on grounds that he was granted reasonable bail terms at Kandara Law courts which he abided by before he was arraigned for plea in court; that he undertakes to attend court for trial until it is heard and determined and that

there are no compelling reasons so far advanced as to why he should be denied bond/bail amongst other grounds.

5. The Respondent /State in turn filed an Affidavit sworn by Pc Stanley Njenga together with the Information on 6th May 2025 averring inter alia that owing to the gravity of the offence, the accused is likely to abscond court and is also likely to interfere with witnesses if released on bond.

6. The court directed for pre bail report to be availed which was done on 16th June 2025.

7. The application was argued orally before this court on 18th June, 2025. Mr. Mwangi learned prosecution counsel opposed the application for bail on grounds that there was a likelihood that the accused would interfere with some of the prosecution witnesses who were his close family members. Mr. Nyamu, learned counsel for the accused on his part, relied on their application dated 7th April, 2025, together with the joint affidavit of even dated sworn by the brothers of the accused.

8. I have carefully considered the application and the brief oral submissions by the learned prosecution counsel opposing the admission of the applicant to bail. I have also duly considered the contents of the pre-bail report filed before this court on 3rd July, 2024. Having done so, I find that the main issue for determination before this court is whether the prosecution has established compelling reasons, warranting the denial of bail or bond to the accused pending his trial.

9. It is trite that under Article 49 (1) (h) of *the Constitution* of Kenya, 2010, an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. Article 49 (1) (h) of *the Constitution* stipulates as follows: "an accused person has the right 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. From the above provision of *the Constitution*, it is evident that whereas an accused person has a constitutional right to be released on bail or bond pending trial, the said right is not absolute and may be curtailed where the prosecution demonstrates the existence of compelling reasons warranting denial of that right.

11. What constitutes compelling reasons was discussed in the case of Republic versus Francis Kimathi (2017) eKLR; where the court expressed itself as follows: "There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in *the Constitution*."

12. Having stated that, the factors that should guide this court when considering an application for bail or bond pending trial are contained in Section 123A (2) of the *Criminal Procedure Code*, as follows: "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."

13. Additionally, The Judiciary Bail and Bond Policy guidelines,2015, at page 25, paragraph 4.26, also provides for the factors that could persuade the courts to deny an accused person bail or bond pending

his trial. It states as follows: "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;

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. In this case, the sole reason advanced by the prosecution to deny the accused person bail, is that there is a likelihood of the accused interfering with some of the prosecution witnesses, especially those who are his close family members.

15. It is well settled, that for the prosecution to succeed in persuading any court that an accused person is likely to interfere with prosecution witnesses, it must place material before the said court to demonstrate the said interference, be it actual or perceived. It is not enough for the prosecution to merely state that the accused person is likely to interfere with witnesses, they must adduce before court evidence of the alleged interference.

16. This position was restated by the court in the case of Republic versus Dwight Sagaray & 4 others (2013) eKLR; as follows: "As I have held before, interference with prosecution witnesses is in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the trial and is an affront to the administration of justice. For the prosecution to succeed in persuading the court on this criterion however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others."

17. Additionally, the court in Republic versus Joktan Mayende & 3 others [2012] eKLR; stated as follows regarding the issue of witness interference: "All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused."

18. On my part, I have gone through the records of the trial court, and it is evident that some of the key prosecution witnesses in this case have a close familial relationship with the accused persons as they are his own biological brothers; as such the allegation by the prosecution that the accused may interfere with the said witnesses cannot be said to be farfetched, considering that one of the factors that would lead the court to assume that there is a likelihood of witness interference is if the accused and the prosecution witnesses have a close familial relationship.

19. I am therefore of the view that it would not be in the interest of justice if the accused is released to the custody of his three (3) brothers, two of whom are key prosecution witnesses in this case. I say so because whereas the accused may not interfere with the said witnesses by issuing threats or intimidations, if released to them, the accused and his brothers will most likely spend a considerable amount of time together and his presence may directly or indirectly influence the said witnesses to give evidence in a particular way or it may influence them not to give evidence at all; thereby jeopardising the prosecution's case.

20. Considering also that the brothers of the accused reside in the same place as the accused, which is also the locus in quo, it would not be prudent to have the accused back in the same area; especially because the family of the victim resides in a neighbouring village.

21. That being said, I noted that the accused has been in custody since 2022. I have also noted from the pre-bail report filed in court on 3rd July, 2024, that the son of the accused, Joseph Mwangi, who resides in Nairobi, had indicated that he was willing to host the accused while he is out on bail or bond and also to ensure that he takes his medication and attends court as and when he is required to.

22. The said Joseph Mwangi has however not sworn an affidavit to that effect. I am of the view that given the accused person's mental state, and the need to have him take his medication as required, not only for his wellbeing but for the wellbeing of those around him, it would have been prudent if the accused person's son would have sworn an affidavit indicating his fixed place of abode, his willingness to host the accused and his willingness to ensure that the accused adheres to the bond terms set by the court.

23. Although the accused persons brothers had indicated in their affidavit dated 7th April, 2025, that the accused person's son had sworn an affidavit on 8th February, 2024, indicating his willingness to host the accused once released on bail, the same is not on this court's record.

24. Flowing from the foregoing, I am of the considered view that the prosecution has demonstrated the existence of compelling reasons warranting the denial of bail or bond to the accused person.

25. The accused is however free to make a fresh application for bail should he demonstrate that he has an alternative fixed place of abode away from the locus in quo and the key prosecution witnesses.

26. Application for bond/bail is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH JULY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....

For Respondent.....

COURT ASSISTANT.....Brian