Mwangi v Republic (Criminal Case E034 of 2022)
[2025] KEHC 9529 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9529 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL CASE E034 OF 2022

TW OUYA, J

JULY 3, 2025

BETWEEN

PETER MUTURI MWANGI .... APPLICANT

AND

REPUBLIC .... PROSECUTION

RULING

1. The accused, Peter Muturi Mwangi, 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 13th of November,2022, at Kirungu village, Mathioya sub-county within Murang'a county, the accused murdered Rahab Nyambura Muchori.

2. The records of this court reveal that the accused was first arraigned before this court on 1st December, 2022, 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 3rd of April, 2024, the accused was finally declared fit to stand trial and on the 2nd of April, 2025, he was arraigned before this court for plea taking where he denied the charges. His learned counsel, Mr. Nyamu, 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 7th April, 2025, seeking to be released on bail or bond on reasonable terms pending the conclusion of his trial, on grounds that he has been in remand from the year 2022; that he suffers from hypertension, diabetes and Schizo affective disorder; that his brothers were ready and willing to post his bail; that his brothers are willing to take him in and assist him in reintegrating into society and ensure that he takes his medication, reports to

Kiria-ini police station, and ensure that he has no communication with any members of the deceased family.

5. 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.

6. 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.

7. 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."

8. 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.

9. What constitutes compelling reasons was discussed in the case of *Republic v 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*."

10. 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."

11. 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:
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> a.) That the accused person is likely to fail to attend court proceedings; or
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> 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."

12. 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.

13. 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.

14. This position was restated by the court in the case of *Republic v 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."

15. Additionally, the court in *Republic v 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."

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. Application for bond/bail is dismissed.

DATED, SIGNED AND DELIVERED PHYSICALLY THIS 3RD JULY, 2025.

HON. T. W. OUYA

JUDGE

For Accused……Nyamu

For State……Ms Manyal

Court Assistant……Brian