



**Prosecution v Kamotho (Criminal Case E001 of 2025)  
[2025] KEHC 9923 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9923 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL CASE E001 OF 2025**

**DR KAVEDZA, J**

**JULY 8, 2025**

**BETWEEN**

**PROSECUTION ..... REPUBLIC**

**AND**

**SARAH WAIRIMU KAMOTHO ..... ACCUSED**

**RULING**

1. Before the Court is a renewed oral application for bail, I refer to it as renewed because an earlier similar Application was declined. *Vide* a ruling dated and delivered on 18 February 2025, this Court declined to grant the Accused Person bail.
2. This Court expressed itself as follows;
  44. This case requires balancing the accused’s right to liberty and bail against the administration of justice. It is my considered view therefore that the principles of justice and public interest outweigh the accused’s right to liberty at this stage. The court must safeguard the trial’s integrity by protecting witnesses and preventing potential interference...45. In the circumstances, I decline the Accused’s Application for bail. The accused shall remain in custody until after the two witnesses have testified. The accused is at liberty to revisit the issue of bail at that point.
3. It is clear from the record that this Court did not shut the door on the accused person’s request for bail. Instead, it left the matter open, indicating that the accused could renew her application at an appropriate time. This approach is consistent with the established legal principle that a bail application may be renewed where there is a change in circumstances.
4. The accused has now brought a renewed application, prompted by the testimony of the two key witnesses. However, it must be clarified that this Court did not state that the accused would be released



- upon the conclusion of their evidence. Rather, the Court held that she would be at liberty to revisit the issue of bail thereafter. It did not guarantee her release.
5. The accused, Sarah Wairimu Kamotho, is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. It is alleged that on the night of 19th and 20th July 2019, at the Lower Kabete area in Nairobi County, she, jointly with others not before the Court, murdered Tob Chichou Cohen. She pleaded not guilty to the charge on 29th January 2025. On 18th February 2025, this Court denied her bail, citing concerns over interference with witnesses.
  6. On 8th April 2025, the accused renewed her application for bail. Directions were issued for the filing of replying affidavits and submissions. Oral submissions were thereafter made on 7th May 2025.
  7. The renewed application for bail is opposed through the Replying Affidavit of ASP Maxwell Otieno sworn on 5th May 2025 and filed on 7th May 2025. ASP Otieno, the investigating officer, reiterates the contents of his earlier affidavit dated 29th January 2025. The crux of his deposition is that the Accused has intimidated, coerced, and/or threatened Prosecution Witnesses 1 and 2, which formed the original basis for the denial of bail. He further deposes that despite both witnesses having testified, the Accused continues to exhibit a pattern of intimidating conduct, including towards investigators. In particular, he avers that on 3rd April 2025, the Accused intimidated CPL Pascal Bwana in open court. This, he argues, evidences the Accused's intent and capacity to influence the course of justice by interfering with remaining witnesses.
  8. ASP Otieno further states that the Accused remains in possession of Land Reference No. 2951/449, the scene of crime, which this Court found to have been tampered with. The Court had previously ordered that the said property be placed under the custody of the OCS Spring Valley. Accordingly, the Accused's current place of residence is uncertain, further militating against the grant of bail.
  9. Additionally, the deponent avers that the Accused is a flight risk. In *HCCR No. 60 of 2019*, she was ordered to deposit Passport No. BK043532. However, upon seeking her travel history via the Immigration Department's report received on 23rd April 2025, it was discovered that she had travelled abroad on multiple occasions using Passport No. BK432046 without notifying the investigating officer, contrary to court expectations.
  10. The opposition is supported by written submissions dated 14th May 2025. The Prosecution submits there remains a real risk of interference with key witnesses, citing *R v Jaktan Mayende & 3 Others, R v Benard Kipasi Moyongo & Another* [2021] eKLR, and *Republic v Fredrick Ole Leliman & 4 Others* [2016] eKLR.
  11. It is also submitted that the Accused presents a credible flight risk, with reliance placed on *Republic v Ahmad Abolfathi Mohammed & Another* [2013] eKLR and *Nganga v Republic* [1985]. Finally, the Prosecution urges the Court to consider the tampering of the crime scene as a further ground to deny bail.
  12. The Accused's position is set out in her Supplementary Affidavit sworn on 7th May 2025. Her case is that this Court, in its ruling of 18th February 2025, held that she was not a flight risk and only denied bail to safeguard PW1 and PW2. She notes that both witnesses have since testified.
  13. Regarding the alleged intimidation of CPL Pascal Bwana, the Accused states that the matter was addressed by this Court, which directed her to apologise by affidavit. She affirms compliance through an affidavit filed on 8th April 2025. On her residence, she deposes that she has a home in Nyeri and family ties. As to the alleged tampering with the crime scene, she indicates her intention to file a review application.



14. On the issue of her travel outside Kenya, she avers that she applied for a new passport after the DCI failed to return her original one, which remains in their possession. She further avers that the state had entered a nolle prosequi in *HCCR No. 60 of 2019*, and thus had no basis to withhold her passport. She maintains that her travel was for family reasons, not to abscond and that the Court had already found she was not a flight risk.
15. In submissions, defence counsel refutes any claim of risk to witnesses, citing *R v Jaktan Mayende & 3 Others*. On flight risk, counsel relies on *Daniel Dela v Republic* [2006] eKLR, *Republic v Richard David Alden* [2016] KEHC, *Nganga v Republic*, and *Ahmad Abolfathi Mohammed*.
16. In its ruling delivered on 18<sup>th</sup> February 2025, this Court laid down the law governing the right to bail in Kenya. It analysed the law, the principles, and the philosophy of the right to bail. Just to rehash the same, the right to bail is now a constitutional right. One is entitled to be released on bail unless there are compelling reasons. The concept of compelling reasons was considered in *R v Jaktan Mayende & 3 others* [2012] eKLR and is now condensed in the *Bail and Bond Policy Guidelines*, 2015.
17. This court also observed that :
  - “ 21. The test of compelling reasons is a higher test. Compelling reasons must be convincing and not founded on mere suspicion. The reasons must be substantiated and reasonably disclosed so as to convince the court that the liberty of an accused should be limited to the extent of denial of bail. .The justification for such a higher test is easy to see. The right to bail has to be read together with 50 [2] [a] which provides that an Accused person has the right to fair trial which includes “the right to be presumed innocent until the contrary is proved” This is a non derogable right.”
18. This Court further observed that the burden of proof to deny bail is on the prosecution. It is on the prosecution to show that there are compelling reasons to warrant the denial of bail.
19. However, this is a renewed application for bail. A renewed application for bail happens when an original bail application has been denied. In such a case, the initial burden of proof is on the accused person to show that there has been a change of circumstances. If the prosecution opposes the change of circumstances, the burden then shifts to the prosecution to demonstrate why the Court should not grant bail despite the change of circumstances.
20. The Concept of changed circumstances is also recognised in the International sphere. Article 60 [3] of the *Rome Statute of the International Criminal Court* provides for review of bail in these terms:
  - “ The pre-trial Chamber shall periodically review its ruling on the release or detention of the person, may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to the detention, release, or conditions of release, if it is satisfied that changed circumstances so require.”
21. In Kenya, the decision of my brother E. Mureithi J in the case of *R v Diana Suleiman Said & Another* [2014] eKLR] brings this concept home. He observed that:
  - “ With respect, I do not agree that the review of bail on the ground of changed circumstances, or changes in the circumstances of the case, including circumstances of the accused, witnesses, victims or the society affected by alleged crime is a strange phenomenon. I would say our courts do it every day when we sit to consider renewed applications for bail such as



when volatility on the ground is established to have ceased or for the cancellation of bail on account of the accused's refusal to attend court while on bail, when sureties withdraw or for other reasons.

The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.”

22. Applying this test to the case at hand, has there been a change of circumstances?

### **Interference with Witnesses**

23. In the previous ruling, this Court held that the Prosecution had established a compelling reason for denial of bail being that there was a real likelihood that the accused person would interfere with PW1 and PW2. The Accused person submits that the two witnesses have testified and therefore there is a change of circumstances. The Prosecution on the other hand asserts that there is a real likelihood of the accused person interfering with the remaining witnesses. The main reason for this is an incident that happened in this Court where the Accused Person is said to have intimidated a police officer.
24. Indeed, this Court on 4<sup>th</sup> April 2025 was confronted with this issue. It was alleged that the Accused person had intimidated a police officer, Corporal Pascal Bwano by uttering the words, shame on you three times. The police officer while on the stand informed the Court that this was not the first time but has been a consistent act by the Accused person ever since she was arrested. Upon hearing both parties, I issued the following ruling;

“I have heard both the officer and the accused person. The officer has no reason to fabricate something of this nature against the accused person. The security guard stated that she saw the accused whispering something but she did not hear it. She did not have to whisper greetings i.e. good morning to the officer. She must have indeed uttered the words 'shame on you'. The officer has told the court that this is the 3<sup>rd</sup> time. The words were uttered during the court proceedings. Even if the officer does not testify before this court today or any other day, he is a potential witness. If the accused person can intimidate a police officer, it means that she is a threat to all other witnesses. Since there are no charges that have been preferred against the accused...The only thing that I can do at this juncture is to direct that the accused shall remain in custody until this court is convinced that she is not a threat to witnesses.”

25. At the close of the day's proceedings, they made yet another bail application. This Court issued another ruling as follows:

“The court made a ruling this morning indicating that the accused conduct amounts to intimidation of a witness. What I would have expected from the accused or her counsel at this juncture is an apology. She did not admit to uttering the said words. The officer said that this was the third time that she had uttered the words 'shame on you'.

It is the duty of the court to protect witnesses. It is therefore my view that the accused needs to first show remorse before this Court can vacate its order.. I would direct that an affidavit



be sworn by the Accused person that she will not intimidate, threaten or in any way try to approach the witnesses. It therefore follows that the application for bond review is denied until when I am satisfied that the accused is not a threat to witnesses.”

26. So has there been a change of circumstances to warrant a review of my orders? The defence submits that there has been a change of circumstances to the extent that the two witnesses have testified and that the accused person apologized in her affidavit. I think not.
27. I reiterate my earlier sentiments that witnesses are the heartbeat and the lifeblood of a criminal trial. It is for this reason that there exists Legislative and Institutional frameworks on the protection of witnesses. The enactment of the *Witness Protection Act* was to mainly protect witnesses. Section 6[1] of the *Act*, lays down measures to protect witnesses to secure the integrity of the criminal justice process. This is because without witnesses there will be no case. It is for this reason that the protection of witnesses serves both the public interest and the administration of justice.
28. Interference with witnesses undermines the criminal justice system and dents the integrity of the criminal process. Furthermore, witness interference not only perverts, a criminal trial into a mock trial but also, prejudices the rights and protection of victims. When an objection to bail is raised on the ground of the likelihood of interfering with witnesses, a court of law must consider the objection carefully as the protection of witnesses is equal to safeguarding the integrity of the trial. In this regard, agree with the position advanced by Lesiit J [as she then was] in *R. v Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No. 57 of 2016 [2016] eKLR where she succinctly stated that:- “Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger an individual or individuals or the public at large; likelihood that the accused may commit other offences. In this instance where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail term; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention.”
29. In dealing with the question of interference with witnesses, this court has held previously in Criminal Case No. E001 of 2020 *Republic v Robert Kipkorir Tonui* that:

“Judicial precedent has time and again held the view that interference with witnesses amounts to interference with the administration of criminal justice and is a compelling reason under Article 49 [i] [h] of the *Constitution*. In *R v Jackton Mayende & 3 Others Bungoma* HCCRC No. 55 of 2009 [2012] eKLR Gikonyo J, while dealing with the question of interference with witnesses rendered himself thus:-“.....[22] 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 the 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.”



30. In this case, the Court already found that there was a real likelihood of the Accused person interfering with the witnesses. The Prosecution had produced OB reports to show attempts of the Accused Person to interfere with the witnesses. It was on this basis that the Court detained the Accused person to protect the two witnesses.
31. However, as the court progressed, the Accused person threatened and intimidated a police officer in the courtroom. This court wonders, if the Accused person is capable of intimidating an armed police officer in court, what is she capable of doing out there where the court's eyes and ears are not present? This Court finds that it is better to err on the side of caution and perform its judicial function of protecting witnesses. To that end, this Court finds that there is a real likelihood of the accused person interfering with witnesses.

### **Flight Risk**

32. While the Court initially found that the Accused was not a flight risk, the Prosecution has since presented new evidence. Bail decisions can be reviewed in light of new circumstances. This Court retains jurisdiction to do so.
33. The Prosecution has shown that the Accused obtained and used a second passport while the first remained in police custody. Her explanation—that she was frustrated by the DCI is unsubstantiated.
34. To establish flight risk, the Prosecution must show that the Accused may fail to appear for trial. In *Republic v Abdulahi* [2024], Mutende J held that the seriousness of the offence and surrounding conduct may justify denying bail. In *Republic v Abdulahi* [Criminal Case E074 of 2023] [2024] KEHC 8030 [KLR] [Crim] [2 July 2024] she expressed the test to be:
  34. The totality of the circumstances and further considering the serious nature of the offence and sentence, it is demonstrated that the accused is a flight risk and no amount of stringent bond terms or conditions would avert the chances of absconding trial.
35. The holding by Mutende J indicates that reasons advanced by the state must be strong, convincing, and forceful to warrant the denial of bail. In this case, it was established that the Accused Person obtained a second passport to travel abroad. The questions of how she obtained the second passport from the immigration department still linger in my head. Did she lie to the authorities? Did she use irregular and deceitful ways to obtain the passport?
36. Further, if the Court was to release her on bail and order her to deposit her passport in court, how would the court prevent her from obtaining a third passport from the immigration department and travel out of the Country? The fact that the accused person could obtain a second passport while another passport was with the police cannot be ignored. It is for this reason that I find that the accused person is a flight risk.

### **Scene of Crime**

37. Another issue raised by the prosecution is that the accused interfered with the scene of crime and that her release would endanger the scene of crime. The accused person does not contest that the scene of crime was interfered with. Indeed, she observes that she renovated the property, which was the scene of crime. Related to this issue, I expressed myself in a brief ruling on 4th April 2025 that scenes of crimes need to be preserved so that they are not altered. This will facilitate the efficient and effective administration of justice. Further, I already found that the scene of crime in this case had been interfered with by the accused person. The need to safeguard and preserve the scene of crime militates against releasing the accused person on bail.



38. For the above reasons, the principles of administration of justice and public interest outweigh the right of personal liberty of the accused at this point. The Court is called upon to safeguard the integrity of the criminal trial by protecting the witnesses and preventing any potential or likelihood of interference and also ensuring that the scene of crime is not interfered with and the accused person attends trial.
39. In the circumstances, I decline the accused's renewed application for bail. The accused will remain in custody until the conclusion of the criminal proceedings.

**DATED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF JULY 2025.**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of;

Ms. Timoi for the Prosecution

Mr. James Singh & Maloba for the Accused

Mr. Kimani Wakimaa for the Victims.

Ms. Karimi Court Assistant

