



**Republic v Ndaruga & 2 others (Criminal Case E010 of 2025)
[2025] KEHC 11768 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE E010 OF 2025
DKN MAGARE, J
JULY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ALEX WANYIRI NDARUGA 1ST ACCUSED

FRANCIS MUTHUI MUHARA 2ND ACCUSED

ANDREW MWANGI MUHARA 3RD ACCUSED

RULING

1. This is a ruling on bond. The accused persons' application for bail is dated 27.5.2025. The accused persons are jointly facing the charge of murder contrary to Section 203 as read with 204 of the [Penal Code](#).
2. In response to the application for bail, the Investigating Officer filed an affidavit sworn on 29.5.2025 opposing the bail on the following grounds:
 - a. There were compelling reasons to oppose bail.
 - b. The murder was masterminded.
 - c. Detention is necessary for their own protection.
 - d. Other accomplices are at large.
 - e. Likelihood of wrath from the members of public.
 - f. The accused persons have been sending money to victims to compromise case.
 - g. The accused is a high flight risk having attempted to escape from custody during the arrest.



- h. There is likelihood of interference with witnesses.
- i. The 1st accused had attempted to intimidate witnesses.

Analysis

3. The issue is whether the accused persons herein should be released on bail pending trial. Article 49(1)(h) of the [constitution](#) of Kenya states that an arrested 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.
4. Section 123(3) of the [Criminal Procedure Code](#) provides;

The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.
5. The law stipulates the reasons upon which bail or bond may be granted. Section 123A of the [Criminal Procedure Code](#) provides;
 - (1) Subject to Article 49(1)(h) of the [constitution](#) and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
 - (2) 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;
6. This court has to determine what would be reasonable terms based on which it can be assured that the accused persons will attend court to the end of trial. In [Mohamood Chute Wote & 2 others v Republic](#) [2021] eKLR Hon. Grace Nzioka expressed herself on Article 49(1)(h) and section 123 of the [Criminal Procedure Code](#) as follows;

The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of the [constitution](#) of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.



7. The court also considers that the accused persons are innocent until proven guilty. Further, at paragraph 3.1. (d) of the [Bail and Bond Policy Guidelines](#) (at page 9) it is provided that:

d) “... Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case.”

8. The first four grounds were that there were compelling reasons to oppose the grant of bail to the accused persons. First and foremost, the murder was not a spontaneous act but a well-orchestrated and deliberate act, suggesting that it was carefully masterminded. Furthermore, their continued detention is necessary for their own safety, given the gravity of the offence and the heightened emotions surrounding the case.

9. Further, the investigating officer continued that there were some other persons who are suspects involved in the offence and are still at large. They posited, in not so many words that releasing the accused persons could interfere with ongoing investigations or even lead to their fleeing to avoid prosecution. Additionally, there is a real and credible risk of public outrage and possible retaliation from members of the community, who have been deeply angered by the incident. The investigating officer concluded that these factors underscore the necessity of denying bail at this stage.

10. The reasons given above are mixed grill. The mere fact that there is fear that witnesses could be interfered with, is not enough. The fear has to have a legitimate basis and the accused persons or any one of them has to stand in a position to do so. So far, the allegation for interference with witnesses has not touched the 3rd accused in any way.

11. The allegation that the charge is serious is misplaced. The court is aware that the accused are charged with murder. The court cannot deny a person bond on grounds only that the charge is serious. Murder is a bailable offence. If the offence charged determines bond, the state can easily charge a person with heinous crimes like terrorism, treason or murder simply to place accused in custody. The seriousness of a crime charged go towards determining the bond amount and not whether one should be released. An accused person enters criminal proceedings presumed to be innocent. This was stated so long ago by the Supreme court of Canada in the case of *R vs. Lifchus* {1997}3 SCR 320 as follows:

“The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient.



12. Consequently, the court cannot, until the end of the trial, presume the accused persons as masterminds. They are presumed innocent until proven guilty. The accused may as well be acquitted at the end of the trial. The court cannot presume one outcome. The accused were under no duty to displace the averments in the investigating officer's affidavit. The accused persons do not take it upon themselves to disprove those averments. It is upon the state to show that the reasons are compelling. In other words, it is not enough to have a series of negatives, the same must be such that they compel the court to not release the accused on bond.
13. In other words, the accused must be released on bond unless there is such overwhelming evidence or cogent reasons that it is not prudent to release any one of the accused. It must also be remembered that each accused must be considered separately as we do not have a concept of collective punishment in criminal law and practice.
14. First, the right to life of the 3rd Accused has been shown to be in jeopardy. He has ill health as demonstrated by the record filed in court. His ill health has deteriorated with his stay in custody. Further, nothing was placed before me to show that the third accused is a flight risk or will interfere with witnesses. So far, such interference has not been shown.
15. The right to reasonable bail and bond terms is underpinned in the Judiciary's Bail and Bond Policy Guidelines as follows:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.”
16. Public hostility is an important matter but not a determinant of bond. The public is expected to be law abiding as they wait for the court to determine the case.
17. Further, in a scenario where an accused person is likely to abscond, then granting them bond would amount to an injustice to the victim, as it could frustrate the course of justice by rendering the trial impossible. The same applies where there is a likelihood that the accused may interfere with witnesses. The PACS report is also favourable.
18. I find that there are no compelling reasons for not releasing the 3rd Accused on bond. Accordingly, I admit Andrew Mwangi on bond for Ksh. 500,000/= with one Kenyan surety.
19. In regard to the 1st accused, I am informed that family members will be witnesses. I am reluctant to release him on bond and can only reconsider this after civilian witnesses have testified. The bond application is accordingly declined.
20. I note that the 2nd Accused has been alleged to attempt to interfere with witnesses. The second accused sent a good and lawful sum of Ksh. 6,500/= to one of the witnesses. No explanation was given. The court notes that this is meant to interfere with witnesses. Consequently, the court is satisfied that it is not prudent to release the 2nd Accused on bond. He shall thus proceed with his case while in custody.
21. The 1st and 2nd accused persons shall remain in custody.

Determination

22. I therefore issue the following orders:-



- a. The 1st and 2nd Accused persons' application for bail pending trial is not merited and is declined.
- b. The 3rd Accused person is hereby admitted to bond of Ksh. 500,000/= with one Kenyan surety.
- c. The 3rd Accused shall deposit his passport in court.
- d. Hearing on 11th February, 2026.
- e. Production order to issue.

DELIVERED, DATED and SIGNED at NYERI ON THIS 28TH DAY OF JULY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Mwakio for the State

Mr. Wambugu for the 1st Accused

Mr. Njuguna Kimani for the 2nd Accused

Mr. Onkendi for the 3rd Accused

Both accused persons present

Court Assistant – Michael

