



REPUBLIC OF KENYA



**Republic v Wawira (Criminal Case E021 of 2024)
[2025] KEHC 11047 (KLR) (Crim) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E021 OF 2024**

MW MUIGAI, J

JULY 28, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MARTIN EGESA WAWIRA ACCUSED

RULING

1. The accused faces the charge of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). He was arraigned before court with the information dated 19/3/2024 and the particulars of charges stated as follows: - Martin Egesa Wawire, On 19th February 2024 at Pipeline area in Embakasi County within Nairobi murdered FS.
2. The accused person was found fit to plead on 20/5/2024 and the charge was read to him and he pleaded not guilty. ODPP opposed grant of bail
3. bond and Pre-bail was to be prepared first and presented before Trial Court Hon. L. Mutende LJ.
4. The accused subsequently filed an application dated 17/2/2025 through the firm of Nduku Njagi & Company Advocates seized of the matter. The accused prays for bond or bail pending his trial on reasonable terms.
5. The application is brought on grounds that.

The murder is aailable offence and that there is no compelling reasons to deny the applicant his constitutional right. That the accused lacks capacity and does not intend to interfere and intimidate witnesses.



6. The applicant is not a flight risk as he is a well-known mechanic and resided with his family at the time of the offence. He also hails from Shimuli in Malava within the Republic of Kenya.
7. Further that the families resolved the matter traditionally and buried the deceased minor in the accused homestead.
8. The Applicant filed his affidavit in support of the application and depones that he has been a law-abiding citizen with no past criminal record to raise suspicion that he would not honor the bond terms of the court.
9. That he was teaching the deceased who was his daughter when he slapped her which caused her death.
10. That he had taken full parental responsibility of the deceased since her birth. He has since spoken to the deceased's mother and the families have amicably resolved the matter at home. The accused refers to the letter from his mother in law and Area Chief annexed to the affidavit.
11. The Accused will stay with his father in Nairobi as he continues to work and provide for his family. He prays to be released on free bond, he is impecunious and comes from a humble background without property to post bond.
12. Letter dated 18/1/2025 indicating that the deceased FS accidentally died in her father's house on 19/2/2024 and that the two families have sat and agreed amicably and buried the body in Shimuli sublocation. The maternal grandfather has no further complaint on the matter as per the annexed letter dated 17/1/2025 executed by maternal grandfather and maternal uncle of the deceased.

Replying Affidavit & Prebail Report .

13. A Pre-bail Report dated 4/7/ 2024 is on record. The Report was filed following directions of the court and in response to the earlier application made during plea.
14. From the Report, the accused is 28 years old and is married with two children aged 3 and 2 months. His wife relocated to her matrimonial home where her mother in law takes care of her and assists in caring for the young children.
15. The deceased was born earlier when the accused was in High School when he impregnated Irene Wawire.
16. The accused stated that he has been suffering from typhoid and ulcers and that he needs to be on special diet.
17. He acknowledges the serious nature of the offence, he also understands that orders will be imposed on him in case he is released on bond which he endeavors to comply with.
18. The victim views are represented by the deceased's mother, the deceased was 7 years old and that they were not married and had been co-parenting well. The child would stay with her and would also live with the accused's mother.
19. The death came with shock, she sorrowfully expressed her anger for the accused and grief for her child. The community at home is hostile and she has not come to terms with the death. She does not support the application.
20. The area administration is the accused uncle who also support the application and knows the accused family well. The administration noted that the accused planned that he stays in Nairobi to ensure court attendance. He refuted claims that the community is hostile and that it became calm after the burial of the deceased.



21. The Investigating Officer is of the contrary view, he stated that the accused may interfere with his wife who is a key witness. The Officer also has reservations on the witness availability to testify against her husband. On availability of sureties, one of the accused uncles has land in Kakamega County that would be used as collateral, they also understand their role in ensuring the accused attends court.
22. The Probation Officer recommended that the application for bond be deferred to a time when key witnesses would have testified.

Submissions.

23. The prosecution filed submissions on 17/7/2024 in contest to the earlier application for bond made during plea. The state urged one compelling ground, that the incidence occurred in the presence of the accused wife /the deceased step mother .
24. That the testimony of the accused wife is likely to be scarred stiffly by the presence of the accused, there is also real apprehension that he would be living in the same house with the said witnesses if he is released on bail.
25. The court was referred to the case of *R vs Victor Kiprotich Cheruiyot* 2021 eKLR & *R vs Bernard Kipasi Moyongo & Another* 2021 eKLR.
26. The prosecution did not file any affidavit or submissions on the application dated 17/2/2025 currently before court but made oral submissions.
27. Parties appeared before this court 3/6/2025 for directions on the current application and made oral submissions .The accused urged that he is not a flight risk and that he is a breadwinner. He relied on the letter of the provincial administration and annexed letter from the maternal grandfather and uncle.
28. The prosecution referred to the replying affidavit by Investigation Officer and the Pre-bail report filed earlier and prosecution submitted that the accused is the deceased father and that the event occurred in a domestic setting .The main witness is the step mother of the child who was in a relationship with the accused .The prosecution opposed grant of bail bond pending evidence of the stepmother is taken first, was of the view that the Court can take the evidence of the stepmother first.
29. From the record , this Court vide Ruling on 5/8/2024 by Hon LJ L Mutende with regard to an oral application for bail made on the date of plea. The prosecution responded to the application vide the replying affidavit and Pre-bail Report filed in July 2024 .
30. The court found that :

The key witnesses will be within the accused reach, his relationship with the witnesses and influential position he holds as husband and co parent create a genuine fear that witness testimony will be hampered.
31. The accused application for bail bond was dismissed. The court also advised that an application for review may be filed following change of circumstances.

Analysis & Determination.

32. The provisions of Section 123A of the *Criminal Procedure Code* provide for the courts power to grant bail and relevant considerations guiding its discretion.
33. Bail is also a constitutional right available to all accused persons as provided under Article 49 [h] of *CoK* 2010. However, the right may be limited where compelling grounds are proved by the prosecution.



34. The ruling delivered on 5/8/2024 has already been determined the accused qualification for bond, it has not been appealed against. The court's jurisdiction is on review of bond bail terms as prescribed by Section 123 A of CPC; grounds of reviewing the decision on bond.

35. Paragraph 4.36 of the Bail and Bond Policy Guidelines provides that:

“Courts shall inform accused persons of their rights to apply for review of bail decisions and conditions. Bail decisions and conditions should be reviewed on a regular basis, as the circumstances of the accused person and the case change.”

36. In Republic v Diana Suleiman Said & another [2014] eKLR, the court was faced with an application for review of its ruling on bond, the change of circumstances test was discussed as follows:- :

“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.....”

The accused must demonstrate change of circumstances that removes the compelling grounds cited by the court earlier.

37. The Pre-bail Report indicated the relationship between the accused and key witnesses. The Investigating Officer particularly expressed his reservation and fear that the accused wife might not testify.

38. The court was persuaded that there was risk of witness interference and also observed that the mother of the child who also co-parented with the accused at the time of the death was a key witness whose evidence may be interfered with.

39. I have considered the new application, the affidavit and annexed letters filed in support.

40. The accused's case is that parties' have resolved the matter through reconciliation and burial of the child at his home in Malava. The letter is executed by the maternal grandfather and Uncle. The deceased mother's input is not recorded, the Pre-bail Report indicated that she had not come to terms with the child's death and that she was angry with the deceased and deeply in sorrow. The mother of the child also disputed the application.

41. I find that the letters from the Area administration are inconclusive as it fails to record her views. It is also in breach of the Victim Protection Act and therefore prejudicial to the case.

42. Further, reconciliation must be with the knowledge and permission of the Prosecution, otherwise it may pass as accused attempts of witness interference and somehow averting the prosecution's evidence. This is already a potential threat in the successful prosecution of the case.

43. Further, the witnesses have not testified and will be within his reach considering his relationship with witnesses ruled earlier by this court.



44. Similar observations were made in the case *Republic v Gerald Mutuku Nyalita & Another* [2015] eKLR. Hon. Muriithi J discussed the threshold of proving witness interference as a compelling reason and held inter alia that :-

“It must be shown that the accused persons are in such close family, filial or other relationship which creates an environment of control and influence of the witness by the accused person such as to interfere with the ability of the witness to give evidence before the court in a free and truthful manner thereby affecting either the credibility of the witness in his or her testimony before the court or the very ability of the witness to attend court. The tenderness of age or the mental acuity of the witness may be factors to be considered in the determination as to the likelihood of interference. The nature of the testimony of the witnesses – as eye-witness or circumstantial – is also relevant...”

45. Section 117 [ii] of the *Penal Code* also creates the offence of Conspiracy to defeat justice, more important is that witness interference is a serious obstruction to the administration and is to be prevented at all costs. The action is described as

“Dissuading, hindering or preventing witnesses from testifying [or endeavoring to do so] in order to obstruct the due course of justice.”

46. In the upshot, I find that threat of witness interference still exists in this case and that the optimal way of balancing the interests of the prosecution and the accused right to a fair trial is to fast track the hearing and possibly starting with the evidence of the mother of the child as per Ruling of 5/8/2024. Thereafter bail bond terms shall be reviewed. Any negotiations and/or reconciliation efforts shall be processed through the Office of Public Prosecution [ODPP] for consideration and reference to Court.

RULING DELIVERED DATED & SIGNED IN OPEN COURT IN NAIROBI CRIMINAL DIVISION ON 28/7/2025 VIRTUALLY/PHYSICALLY.

M. W. MUIGAI

JUDGE

