



**Republic v Muchira (Criminal Case 5 of 2018)  
[2025] KEHC 10616 (KLR) (Crim) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10616 (KLR)

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

**CRIMINAL  
CRIMINAL CASE 5 OF 2018**

**MW MUIGAI, J  
JULY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DUNCAN MURIMI MUCHIRA ..... ACCUSED**

**RULING**

1. The accused was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence read:- DUNCAN MURIMI MUCHIRA , On 30<sup>th</sup> December 2017 at about 21:30hrs at Kasarani Estate in Kasarani subcounty within Nairobi county murdered Cynthia Kamwai Nthautha .
2. The Accused answered to the charges on 24/1/2018 when he was arraigned for plea and said “IT IS NOT TRUE.”
3. The accused application for bond was granted as per the Ruling Hon. J. Lessit (as she then was) delivered on 8/11/2018. However, the accused bond was cancelled as per the orders of the court made on 12/10/2022.
4. The Accused filed the application dated 11/2/2025 and prays for ORDERS THAT:-

The Hon Court be pleased to reinstate bail / bond terms previously granted by the Applicant subject to such conditions as the Court may deem fit and just.

In the alternative, the Hon Court to admit the applicant to fresh bail /bond terms on reasonable conditions pending determination of the criminal case



5. The Court considers extenuating circumstances leading to forfeiture and grants the Applicant 2<sup>nd</sup> chance in the interest of justice.
6. The application is brought under the provisions of Section 123 of the *Criminal Procedure Code* and Article 49 1 (h) of Constitution and the supporting Affidavit of DUNCAN MURIMI MUCHIRA.

### **Grounds Of Application.**

7. The grounds of the application are that:  
There was lack of communication of the part of the accused's Counsel on hearing dates in the matter. That violation of bail terms was not intentional. That the warrants were issued and he was incarcerated when he appeared at the court premises. That he is not a flight risk as demonstrated by his willingness to attend upon realization of warrants of arrest.
8. The applicant is not a threat to witnesses and his life is not in any form of danger, the defense has also been ready to proceed with the case. However, the Prosecution had been unable to proceed causing significant delays.
9. The Applicant's right to fair trial has been contravened as he remains in custody in a trial that has never been incarcerated contrary to Article 50 (2) (e) and trial that must be conducted without unreasonable delay.
10. That forfeiture of bond terms was caused by mistake of Counsel which should not be visited on the Applicant. He has also demonstrated full co-operation with the court and the prosecution. His release will not be prejudicial to the administration of justice.
11. That the right to fair trial is a non-derogable right. The breach of previous bond terms does not preclude the Court from granting the application. That the Court may impose stricter conditions to ensure compliance while safeguarding his constitutional rights.

### **The Accused's Supporting Affidavit.**

12. The accused depones that he was not apprised of hearing dates after his surety was approved on 15/7/2019. This was a bona fide error on his Counsel and consequently he did not appear on scheduled dates.
13. That the on learning of warrants of arrest, he attended Court when on appearance he was rearrested bond cancelled and certificate returned to the surety. Further that he had been detained at Industrial area remand prison for 2 years without any significant prosecutorial progress in effect has endured incarceration without conviction. Further undermining presumption of innocence.
14. The applicant prays for reinstatement of initial bond terms or new terms it deems appropriate.

### **Replying Affidavit.**

15. The prosecution filed the affidavit of No 63651 CPL Wilson Kiptum of DCI Kasarani sworn on 4/3/2025 to contest of the application.
16. The prosecution's case is that the accused absconded court on several occasions in the year 2021 and a warrant of arrest was issued on 9/2/2022. That the surety also appeared before court and stated that he did not know the whereabouts of the accused and could not reach him on phone.
17. That the accused was arrested on 12/10/2022 and was presented in court and bond terms were cancelled. The surety appeared on 26/7/2023 prayed to be discharged as surety.



18. The accused is solely responsible for knowing dates for court appearance. His advocates and surety were also present in Court and did not know his whereabouts.
19. The accused will disappear without a trace if granted a second chance halting the hearing and determination of the case.

### **Submissions.**

20. Parties took directions on filing written submissions.
21. The applicant filed his submissions on 10/4/2025 and frames issues for determination as whether the applicant should be readmitted to bond terms pending trial.
22. The accused urges that the legal position that bail is a right and not a privilege and that a departure from the principle must be judicially justifiable with clear and cogent reasons supported by evidence.
23. Further conditions are provided in the Bail and bond Policy Guidelines 2015.
24. Further the accused is presumed innocent and should not be subjected to indefinite pretrial incarceration as prosecution drags its feet in commencing the proceedings. This delay bolsters his plea for reinstatement of bond, courts have recognized that bond is granted to prevent oppressive pretrial detention.
25. That silence or inaction of the prosecution without justification should be interpreted to mean that there were no compelling reasons to continue limiting his right to bail.
26. On non -attendance to the trial proceedings and his bond cancellation, the applicant submits that previous breach of bond terms has been satisfactorily accounted for which was a genuine excusable miscommunication by Counsel.
27. The accused presented himself, this act speaks of good faith and respect of the honorable court. There is no suggestion that he remained away for a significant period or to gain advantage. Prompt voluntary appearance underscores his commitment to face trial.
28. Appropriate and enhanced conditions will resolve concerns relating to his future attendance , the accused is fully amenable to comply with the court conditions.
29. That he does not pose risk to witnesses , he argues that the matter has not been prosecuted since 2018 due to the systemic or investigative lapses and not the accused. He is also a first offender and is not a danger to public safety. The accused relies on the case of Danson Mgunya & Another 2019 eKLR , R -vs- Sifuna (2023) KEHC and Florence Muthoni Kamau Vs Republic (2021) eKLR.The accused submits that in Florence Muthoni case, the High court reinstated bond terms cancelled by the magistrate court where the Accused Counsel mis diarized the hearing dates .

### **The Prosecution Submissions.**

30. The prosecution filed submissions on 23/4/2025 , the issue for determination is should the accused applicant bail /bond be reinstated .

The respondent refers to the case of Republic -Vs- Violet Kerubo (2025) eKLR and the case of Samuel Muthaura -Vs- Republic (2020) eKLR .The accused is facing a serious offence which carries a heavy penalty if convicted .The accused has absconded several times without any believable justifiable reason.



## **Analysis & Determination.**

31. The issue for determination is Accused person's reinstatement of bail bond.  
The accused right to bail was determined in the first application and ruling on record. The court noted that bail was not opposed but the prosecution, the pre-bail report was filed and victims were opposed unless stringent conditions were set. The accused background was documented and it would not be difficult to trace him, his place of aboard was also documented.
32. The Ruling on Bail and Bond by Hon.J. Lessit J (as she then was) delivered on 9/11/2018 granted the Accused person bail and bond as follows with the following conditions;
33. The conditions of bond/bail were set out as follows:-
  - a. The accused was released on 100,000/= cash bail
  - b. An alternative bond of Ksh 250,000/= with one surety of like sum.
  - c. The accused should not make any contacts direct or through proxy with prosecution witnesses or potential witnesses
  - d. The Accused shall report to the OCS Kasarani Police station or Investigating officer once every 30 days until final conclusion of the case
  - e. The accused shall attend trial without fail.
  - f. He should not commit any other offence during the pendency of this case
  - g. Breach of any of these conditions may result in the cancellation of accused bond.
34. Article 49 (h) of Constitution provides for the right to bail pending trial. As much as it is a constitutional right, it can be limited where compelling reasons are proved. The court can also issue stringent terms to ensure that accused attends court.
35. The accused was strictly obligated to attend court during trial and mention dates. He was also tasked with reporting to the OCS Kasarani police station or the investigating officer once every 30 days.
36. These were orders for strict supervision and were further issued for administration of justice.
37. The Accused person was released on bond with surety on 15/7/2019. On 11/11/2019 the matter was before Hon.Lessit J, the Accused was present hearing was adjourned by Prosecution to 12/11/2019 the Accused was present and matter was adjourned again and hearing scheduled before Hon.Wakiaga J on 21/22/23/7/2020.
38. The Accused appeared before Hon.D.O Ogembo J court on 8/2/2021 when the matter was for hearing date and 19/4/2021 was given.
39. The matter later came up for hearing on 16/5/2021 before Hon.Lessit J, 10 witnesses were available and the Advocate for the Accused told Court that the Accused person was unable to log on line. The matter was scheduled on 12/13/14/10/2021.
40. On 12/10/2021, the matter was before Hon.L Mutende J for hearing. The accused did not attend on 12/10/2021, his Counsel Mr Mutuma was represented by Ms Mburu who held his brief and the dates were not suitable as Counsel was invigilating exams. A hearing date was taken on 9/10/16/ 17 February 2022.



41. Hearing dates were set for 9/10/16/ 17<sup>th</sup> February 2022 in the presence of the Accused's Counsel.
42. The accused was absent on 9/2/2022 and his advocate was absent too, the Prosecution sought more time to contact DCI and avail witnesses. The matter was extended to 10/3/2022
43. On 10/3/2020, the Accused person and his advocate were absent and ODPP/Prosecution applied for warrant of arrest to issue against the Accused person. The warrants were extended to 5/5/2022, 8/6/2022 when summons were issued for the surety to appear in Court.
44. On 7/7/2022 Mr Obura Holding brief for Mr Mutuma Advocate for the Accused person appeared before Hon. LJ Mutende and the advocate explained that on 5/5/2022 the advocate was unable to log online, the witnesses were never available. The advocate tried to reach the Accused person and he was not answering their calls. The Advocate was aware of the Warrant of arrest issued against the accused person and summons to the surety were also issued.
45. The accused advocate was in attendance asked the Court to give directions and proposed another date to enable Police arrest the Accused person. They were handling the matter on Pro bono basis.
46. The ODPP /Prosecution had no heard from DCI Kasarani and the Court extended warrant of arrest to executed by DCI Kasarani.
47. On 28/7/2022, No. 86449 CPL Kaprio Lekakeng, the new Investigating Officer told court that the accused was in Nairobi and that he was endeavoring to get the numbers he gave and details of the surety and he needed 2 weeks.
48. On 12/10/2022 the accused appeared with his Counsel, Mr Ouma. The ODPP/Prosecution made an application for cancellation of bond terms on ground that he went missing on 23/11/2020 and his whereabouts were not known and until warrant was issued and summons to surety and there was no plausible explanation and before taking hearing date the issue of bond cancellation to be dealt with first.
49. Mr Ouma opposed the application, he stated that the Accused person was not informed of the date by his Counsel who left the firm of Kihara & Were and that the accused was not informed of the hearing dates. He argued that the mistake of Counsel should not be visited on the accused.
50. The Court ruled that,

‘In as much as the Accused person was not informed of the hearing dates by Counsel, looking at the Court record he had a surety who undertook to ensure his attendance. To date whereabouts of the surety are unknown.

That even if the accused were to be believed, the person was not a suitable surety. Lastly, that the accused has proved to be a flight risk and cannot continue being out on bond. In the premises the Accused person has proved to be a flight risk. Therefore, the bond stands cancelled. He will remain in custody until the conclusion of this case. The case will be heard on 7/3/2023’
51. The law on provision of bail and bond is per Article 49(1)(h) of *the Constitution* grants bail for all offences, the gravity of the offences notwithstanding save for compelling reasons advanced by ODPP/ Prosecution. The presumption of innocence is enshrined in Article 50(2) of *the Constitution*. Section 123 of the *Criminal Procedure Code* allows the accused person to request for bail, and the court to grant it. The Bail & Bond *Policy Guidelines of 2015* expound on terms and conditions to consider in grant of bail and bond.



52. These provisions were adhered to and the Accused person Applicant was granted bail and bond terms by Ruling of 8 /11/2018 with conditions. They are not applicable on reinstatement of bond application.
53. From the Court proceeding and record the Accused person thereafter absconded from 16/5/2021 upto 12/10/2022 close to 15 months.
54. The Accused person failed to comply with conditions of bail bond, he did not attend Court nor offer any information, circumstances or situation to consider. He did not report to OCS/I/O as required. His advocate could not reach him, the surety Nicholas Kariuki was not traced/reached; he was called by Deputy Registrar upon Summons Requiring Attendance of Surety was issued on 12/7/2021 on 07082094345 on 13/7/2021 t 10.06 am;
55. 14/7/2021 at 11.31 am & 15/7/2021 at 10.47 am. Cumulatively, the evidence above supports the ODPP/Prosecution to have applied for cancellation of bond and the Court to have granted the same. Against the Accused person’s application, that his advocate did not inform him of dates; bail and bond was granted to him personally with conditions to comply and not his Advocate. As per Court Record, the advocate informed the Court he could not reach him and he did not know his whereabouts.
56. The Ruling of 8/11/2018 by Hon.J.Lessit J (as she then was)and Ruling of 12/10/2022 by Hon. L.Mutende J are valid and legal orders of Courts with similar, equal and competent jurisdiction as this Court and therefore, this court lacks appellate powers to sit on appeal of its own decision.
57. The decision of Florence Muthoni Kamau Vs Republic (2021) eKLR, the High Court set aside orders and reinstated bond in its supervisory jurisdiction under Section 362 of the [Criminal Procedure Code](#). This is not available to the High court.
58. Further, the earlier decision found that the accused was qualified for bond and no compelling reasons existed at the time. Whether his right to bail has been violated is not an issue at this stage since he breached bond terms.
59. The court’s discretion is limited to its power to reinstate and give him a second chance. It is not an appeal or a contrary finding to the earlier decision.
60. The discretion is guided on foundation that bond is a constitutional right and that Section 123 CPC allows the court to revisit the issue where circumstances have changed or justice allows it. It is based on judicious discretion and each case is determined on its merit
61. In Republic –Vs- Violet Khanali [2021] eKLR which has been cited by the prosecution, Musyoka J cited several authorities and concluded that “With respect to reinstatement of bond for absconding, the courts are uncompromising and unforgiving.”
62. The case of Samuel Muthaura vs. Republic [2020] eKLR is also an example where the accused absconded for 2 months and was apprehended by the police. Gikonyo J held that denying his bond, by way of not reinstating it, was justifiable as absconding was a compelling reason, as his attendance of court in future was not guaranteed.
63. Republic vs. Danson Mgunya & Another [2010] eKLR (Ibrahim J), stated in part;
 

‘Bond/bail is given on the undertaking that the accused person would attend court. That is the principal condition upon which the bond/bail is granted. It is at the core of the matter. Once that undertaking is broken or breached, then the foundation for bail/bond is destroyed. Bond/bail is founded on trust, that the accused will keep his word, and attend



court as and when required, in accordance with the bond terms. Once that trust is broken or lost, there cannot be a basis for reinstatement of the bond.’

64. The accused has submitted that bond is a constitutional right and the principle cannot be departed without cogent evidence. He also urges that prosecution have delayed the case and are not willing to arraign witnesses .In the process his is subjected to pretrial detention .
65. The court agrees that such a scenario must be avoided and where accused persons are in custody hearing dates are given and expeditious determination of cases must be pursued.
66. However, the accused failed attend court after 26/1/2022. Several hearing dates were given to fast track the case. It is not true that he was not aware of dates or that he lost contact with his counsel. As seen, he was present when the dates were given which by practice should be indicated in his bond. The accused counsel also attended court on subsequent days.
67. He had also absconded earlier in 2019 and warrants of arrests are on record for 9 months he failed to appear before the trial court.
68. It is trite that cases belong to parties, requiring their follow up and attendance .In a criminal trial, diligence and strict attendance of court sessions was expected since non-attendance is a compelling ground that might allow limitation of the accused right.
69. The accused was also required to report to the DCI Kasarani police station or the investigating officer as one of the conditions of grant of bail and bond. It is evident that he did not comply with this order otherwise tracing him would not be difficult .
70. The accused application does not demonstrate grounds for reinstatement of bond.
71. Instead he has demonstrated intentional breach. His surety also failed to assist the court and making the court revoke the terms. Suffice, the accused attendance cannot be assured and bond cannot be issued.
72. The court also noted that his background and his place of aboard placed was well documented and that he could be easily traced. It appears that the accused betrayed the courts trust and acted in a manner that frustrated the administration of justice.
73. For the above reasons the application dated 11/2/2025 is dismissed.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT IN CRIMINAL DIVISION AT NAIROBI THIS 21/7/2025 PHYSICALLY/VIRTUALLY.**

**M.W. MUIGAI**

**JUDGE**

