



**Republic v Philip (Criminal Case E004 of 2025)
[2025] KEHC 10526 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10526 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E004 OF 2025**

**DR KAVEDZA, J
JULY 21, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERIC MUTINDA PHILIP ACCUSED

RULING

1. The accused is facing a charge of murder contrary to section 203 as read with 204 (Cap 63) Laws of Kenya. The particulars of the offence are that on the 30th day of March 2025 at Multimedia University of Kenya along Magadi Road in Karen in Lang’ata Sub-county within Nairobi County, the appellant murdered Sylvia Kemunto Ayaye. He pleaded not guilty to the charge.
2. He has now approached this court seeking to be released on reasonable bail/bond terms pending trial. In response, IP Jairus Mutua, the investigating officer, filed an affidavit dated 26th May 2025 to oppose bail pending trial.
3. The averments made by the investigating officer are as follows: The accused person is likely to interfere with the witnesses, some of whom are his fellow schoolmates, classmates, and roommates. The accused person, immediately after committing the crime, informed one of the prosecution witnesses of his intention to cross the border into Tanzania; hence, he is considered a flight risk. His release from custody would disrupt public order and escalate public outrage in light of the rampant cases of femicide in the country. He urged the court to dismiss the application for bail pending the hearing and determination of the case.
4. In a replying affidavit dated 3rd June 2025, the accused person averred that the prosecution failed to furnish compelling reasons for the denial of bail. He denied the claim that he is a flight risk since he voluntarily presented himself to the police upon being informed of the allegations against him. He



- maintained that he neither has the financial muscle nor the social clout to intimidate or threaten the prosecution witnesses. He implored the court to grant him reasonable terms for bail.
5. On 9th June 2025, the prosecution received a report from Dr. Mucheru Wang'ombe, a psychiatrist at Mathare National Teaching and Referral Hospital, regarding the mental state of the accused person. Having medically examined the accused, Dr. Mucheru affirmed that the accused is not fit to plead. He further recommended that corroborative history from the next of kin is required as part of the evaluation.
 6. The application was canvassed by way of submissions. The prosecution submitted that the accused person is a flight risk with no fixed place of abode or employment. They asserted that the accused intended to flee the jurisdiction of the court, as evinced in the statement of one of the prosecution witnesses. The statement comprises a phone call conversation between the witness and the accused in which the accused allegedly intimated that he had planned to travel to Tanzania using his father's motor vehicle to flee the jurisdiction of the court. The prosecution asserted that as a consequence, the accused was a flight risk.
 7. In addition, the prosecution was likely to interfere with prosecution witnesses who were his schoolmates and classmates, because he is privy to their identities. Further, he is apprised of the nature of evidence these witnesses will adduce during the trial, which greatly increases the likelihood of the accused person contacting and inflicting genuine fear and anxiety in them. They cited the case of R v Fredrick Ole Leliman and 4 others in support of this position.
 8. Mr Omari, learned counsel for the victim, opposed the bail application. He outlined the brutal circumstances of the case, stating that the accused had a history of harassing the deceased and that her decision to end the relationship led to her murder. It was alleged that the accused killed the deceased, concealed her body in a bag, and disposed of it in a water tank atop a university hostel. He later fled to Sultan Hamud and only surrendered after being persuaded by his parents.
 9. Learned Counsel acknowledged the accused's right to bail under Article 49(1)(h) of *the Constitution*, but submitted that compelling reasons exist under section 123A of the *Criminal Procedure Code* to deny it.
 10. First, he argued that the accused's flight from justice shows a likelihood of absconding and non-compliance with court orders. Second, there is a risk of interference with key prosecution witnesses, some of whom are known to the accused. The deceased's mother also raised fears for her safety and that of her young children. Reference was made to the cases of R v Joktan Mayende & 3 Others [2012]eKLR and R v Dwight Sagaray & 4 Others [2013]eKLR, and section 10 of the *Victim Protection Act*, which emphasises the need to consider the victim's wellbeing in bail decisions.
 11. Lastly, counsel cited the seriousness of the offence and public interest due to rising cases of femicide. He referred to R v Fredrick Ole Leliman & 4 Others [2016]eKLR on risks to the accused's safety and public order. He concluded by citing KKK v Republic [2017] eKLR, urging the court to balance the accused's right to bail with the integrity of the trial process.
 12. Learned Counsel for the accused submitted that on 4th April 2025, the accused voluntarily presented himself at Sultan Hamud Police Station after media reports linked him to the deceased's death. He stated that prior to that, on 30th March 2025, the deceased's mother had approached him for help in tracing her missing daughter, whom he had been dating. On 1st April, he was interrogated by police and gave all the information he had. He later travelled to Sultan Hamud on 2nd April without any knowledge that he was a suspect or under any obligation to remain within the institution.



13. In support of the bail application, he submitted that he is constitutionally entitled to bail under Articles 29 and 49 of *the Constitution*. He cited the case of Republic v Danson Mgunya & Another [2010]eKLR, where the court held that the right to bail cannot be limited by section 123 of the *Criminal Procedure Code*. He also referred to Michael Juma Oyambi & Another v Republic [2019]eKLR, where the Court of Appeal overturned a High Court decision that had denied bail based solely on the gravity of the charge.
14. Second, he urged the court to impose reasonable bail terms, referring to Harish Mawjee & Another v Republic [2020]eKLR, and noted that his mother had raised Kshs. 100,000. Third, he argued that none of the reasons opposing bail are compelling. He denied being a flight risk, having voluntarily presented himself to police. He also denied any interference with witnesses, noting no complaints had been filed. He challenged the claim that he posed a public risk, saying the probation report relied solely on the victim's family's views. He also disputed the relevance of femicide concerns. Lastly, he argued that being found unfit to plead should not bar bail, relying on Hassan Hussein Yusuf v Republic [2016] eKLR where the court held that where it is the opinion of a psychiatrist that the appellant therein would not pose a threat to himself or the public, he should be set at liberty and prison authorities shall ensure he is facilitated to his home.

Issues for Determination

15. This Court is of the view that the main issues for determination are as follows;
 - a. Whether the prosecution has established sufficient compelling reasons to warrant limiting the accused's right to bail.
 - b. Whether the accused person should be granted bail.

Analysis and determination.

Whether the prosecution has established sufficient compelling reasons to warrant limiting the accused's right to bail

16. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya. The right of an accused person to be released on bail is not absolute. Section 123A of the *Criminal Procedure Code* provides thus;

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

- a. Nature or seriousness of the offence;
 - b. The character, antecedents, associations, and community of the accused person;
 - c. The defendants record in respect of the fulfillment of obligations under previous grant of bail;
 - 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 if released on bail, it is likely that he would fail to surrender to custody;
- b. Should be kept in custody for his own good.

17. Further, in the case of *R v Pascal Ochieng Lawrence* [2014] eKLR, the Court outlined key considerations in the determination of an application for bail pending trial as follows:

“It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the state. The court, in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:-The seriousness of the offence although this carried greater weight under the old constitutional dispensation.-Weight of the evidence so far adduced if the case is partly heard.-Possibility of the accused interfering with witnesses.-Safety and protection of the accused once he is released on bail/bond.-Whether the accused will turn up for trial.-Whether the release of accused will jeopardize the security of the community.”

18. In the same breath, The Kenya Judiciary’s Bail and Bond Policy Guidelines, March 2015 at page 25 stipulate the procedures adhered to by Court in a bail application as stated below;

- (a) 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:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - 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; or
 - 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

Interference with witnesses and investigations.

- 19. The first ground advanced by the prosecution is the likelihood of interference with witnesses and investigations. It is averred that some of the prosecution witnesses are either classmates or schoolmates of the accused. The argument is that owing to the pre existing relationships, the accused could, directly or indirectly, exert influence upon them.
- 20. The accused has disputed this allegation by asserting that he lacks the financial means or social clout to interfere with any witness. That may be so. However, interference does not necessarily require monetary leverage. The mere possibility of intimidation, whether subtle or overt, especially in a school



setting, cannot be ruled out given the personal proximity to witnesses. In *R. V. Dwight Sagaray & 4 others*, [2013] eKLR, on interference with witnesses, the court stated that: -

“For the prosecution to succeed in persuading the court on these criteria, 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 familiar relationship between the accused and witnesses, among others.”

21. Applying that threshold, it is apparent that the prosecution has not placed any direct or credible material before this Court to demonstrate actual or attempted interference. There is no evidence of threats, communications, or conduct, either explicit or implied, that would support the claim. Moreover, the investigations have been concluded, and the accused has already been charged in court. The identities and statements of witnesses have been secured. Accordingly, while the Court does not entirely dismiss the concern, it cannot elevate it to a compelling reason in the absence of substantiating material.

Flight Risk

22. The second ground advanced is that the accused is a flight risk. It is contended by the prosecution that upon being summoned by the police for questioning, he thereafter departed for his rural home in Sultan Hamud, despite the academic term being in session. This, they argue, suggested an intent to evade further inquiry. Additionally, the accused is said to have confided in a classmate his intention to travel to Tanzania, which is outside the court’s jurisdiction.
23. While the accused maintains that he presented himself voluntarily to the authorities once he became aware that he was a person of interest, he did not deny that he travelled to Sultan Hamud during an active school term. This, in itself, is indicative of conduct inconsistent with one who is fully committed to submitting to the judicial process. Furthermore, the Court takes judicial notice of the porous nature of our borders, consisting of unofficial crossings commonly referred to as panya routes that allow movement in and out of the country without detection. This compounds the risk of absconding and frustrates the effective administration of justice.

Seriousness of the Offences.

24. Third, the State argues that the seriousness of the offence alone constitutes a compelling reason to deny bail. While the right to bail is a constitutional guarantee under Article 49(1)(h) of *the Constitution*, it is not absolute. The Court is enjoined to consider the nature of the offence and its attendant circumstances. In the case of *Republic v Ahmed Mohammed Omar & 6 Others* 2010 eKLR, Ochieng, J. stated that:

“... whereas the applicant is still presumed innocent; if he were to be convicted for murder, there is a possibility that the trial court could sentence him to death. To my mind, therefore, the severity of the sentence remains a significant factor for consideration in an application for bail pending trial.”

25. In a ruling from the Supreme Court of Malawi, in the case of *John Zenus Ungapake Tembo & 2 Others v The Director of Public Prosecutions*, M.S.C.A. CR. Appeal No. 16 of 1995, the court discussed the



consideration of whether an accused person may be tempted to avoid trial once bond is granted, and observed thus:

“Fear is a natural instinct in human beings, so that generally speaking, the more serious the Offence, a capital offence, for example, and the sentence it may call for upon conviction, the greater the likelihood that the Accused person would be disposed to abscond.”

26. Whereas the ground advanced by the State is an important one. It cannot be relied upon standing on its own, unless there are grounds to show or demonstrate that the accused may be inclined to evade trial in order to escape punishment. The ground has not been substantiated, and in the circumstances it is not sufficient standing alone to justify the denial of bail. *The Constitution* guarantees the enjoyment of bail by all accused persons, notwithstanding the offence they face and the punishment they may face if convicted. That right should not be curtailed without good cause.

Public Hostility.

27. Fourth, the prosecution has raised concerns about community hostility. It is alleged that following the incident, learners were withdrawn from the school run by the accused’s mother. This would suggest lingering tension and unresolved emotions within the community.
28. Pre-trial detention may be necessary to preserve public order where it is demonstrated that the public response to an offence is such that the release of the accused person would likely disturb public order or undermine public peace or security. The above grounds are provided for in Section 123A (1) of the *Criminal Procedure Code* and paragraph 4.26 of the Bail and Bond Policy Guidelines.
29. There is no credible evidence that this hostility has abated. Releasing the accused at this stage might not only endanger his own safety but could also destabilise the local environment.

Mental Fitness.

30. Finally, there are issues concerning the accused’s fitness to stand trial. Upon being arraigned, the Court directed a psychiatric assessment. The report returned by the State psychiatrist indicates that the accused is not fit to plead. It is a matter of record that defence counsel had initially insisted that the accused should take plea prior to the completion of the mental assessment, relying on the presumption of sanity. The Court, contrary to its modus operandi, acceded to this request. It has since become clear that this was premature.
31. The resulting report, however, presents a different picture, requiring the Court to proceed with caution. Reference is made to the decision of Ngenye J in Nairobi High Court Criminal Revision No.232 of 2016, Republic vs Nuseiba Mohammed Haji Osman, where she held as follows:

“A balancing act is required between the rights of the individual and public interest. The Bail and Bond Policy Guidelines recognize this principle under para.3(e) at pp. 9-10, acknowledging that in certain instances: ‘The interests of justice therefore demand the protection of the investigation and prosecution process against probable hindrance by accused persons. It is therefore important for police officers and judicial officers to appreciate that the public have an interest in the effective prosecution of offences.’ The Guidelines proceed to provide that: ‘it must therefore be demonstrated with convincing evidence that his or her release will present risks, and that such risks cannot be managed, even with the attachment of appropriate conditions’ (Emphasis added).”



32. In this case, the Court acknowledges the mother's supportive role, but also notes that her full-time employment may limit her ability to provide the level of supervision the accused may require. No detailed care plan has been presented by the family, and there is nothing before the Court to indicate the existence of a structured medical or psychiatric framework to support the accused's continued care. There is also no assurance regarding measures to ensure his safety and that of others if released. These matters, though delicate, cannot be overlooked. It would therefore be irresponsible for this Court to permit his release.
33. Given the absence of such safeguards and the need for consistent psychiatric monitoring, the Court is satisfied that the current custodial setting offers the most suitable and secure environment for the accused to receive the necessary care and treatment. Prison facilities are equipped to liaise with mental health professionals and ensure that appropriate interventions are in place during this period.
34. Taking into account the totality of the circumstances, this Court is satisfied that there exist compelling reasons to deny bail under Article 49(1)(h) of *the Constitution*.
35. Accordingly, the application for bail is hereby declined. In view of the findings in the psychiatric report and the legal requirement that an accused must be mentally fit at the time of plea, the Court finds that the plea taken was irregular and cannot stand. It is hereby set aside, and the matter shall be mentioned on a future date for the taking of plea once the accused is certified fit to do so. The State is directed to ensure that the accused continues to receive appropriate psychiatric care in the interim. The matter shall be mentioned periodically to appraise the court on the status of the accused.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JULY 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina & Ms. Timoi for the Prosecution

Mr. Johnstone Danier Jr for the Accused

Mr. Danstan Omari & Shadrack Wambui & Nyaberi for the Victims

Accused Present

Ms. Karimi Court Assistant.

