



**Republic v Owino & another (Criminal Case E015 of 2025)
[2025] KEHC 10530 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E015 OF 2025**

**DK KEMEL, J
JULY 18, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CHRISTOPHER OKELLO OWINO 1ST ACCUSED

ROSELINE ATIENO OKELLO 2ND ACCUSED

RULING

- Both accused persons herein have been charged with nine (9) counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on the 23rd day of April 2025 at Upanda village, Sigomere Sub- Location, East Uhoho Location within Ugunja Sub-County in Siaya County, they murdered Jacinta Akinyi Ouma, Sheila Ouma, Loice Lorine Ouma, David Davis Ouma, Noela Atieno Ouma, Raya Brayan Ouma, Noel Leon Ouma and Meline Ouma. The accused persons denied the charges and the matter is currently at pre-trial conference stage before the hearing begins in earnest.
- M/s Kerubo, learned counsel for the prosecution has urged the court not to release the accused persons on bond pending trial. According to learned counsel, the prosecution have already indicated their objection to the release of the accused persons on bond pending trial and that the investigating officer has since filed an affidavit in opposition to bond dated 29th May 2025. According to counsel, the charges against both accused involve the death of nine members of one family who perished in a fire incident. It is the view of the counsel that the accused persons herein should not be released on bond because they are a flight risk. Further, it was contended that the offences are serious and that the local community is still reeling in shock following the brutal killing of all the nine victims and that the community is still hostile to the accused persons. Learned counsel further added that the homes of the accused persons were razed down/burnt by irate members of public and hence they do not have a fixed place of abode and therefore nobody knows where they currently stay. It was the submission of counsel that if the



accused persons are released, they might not be found and that their lives are at risk as members of public are still agitated and that their lives might not be saved. Finally, learned counsel urged the court to decline the release of the accused persons on bond.

3. Mr. Obado, learned counsel for the defence urged the court to release his clients on bond pending trial. He confirmed having received the affidavit filed by the investigating officer in opposition to release the accused person on bond. Further, he also confirmed having perused the pre-bail report filed by the County Probation Officer. Learned counsel submitted that the issue of bail is enshrined under Article 49 of the Constitution unless there are compelling reasons to warrant denial of bond for the accused persons. It was the view of the counsel that the mere fact that an offence is serious and carries a serious sentence, the same is not sufficient to deny an accused bond since the key issue is whether the accused will attend court. Learned counsel confirmed that the 1st accused is a resident of Kibera in Nairobi and if released on bond he will attend court as and when required. Further, that the issue of hostility by the public will not affect the 1st accused who is a resident in Nairobi and that the 2nd accused who also resides in Nairobi will attend court when required. It was further urged that accused persons are not aware of any risks to them. Finally, it was submitted that the accused persons will not interfere with the witnesses.
4. The court called for pre-bail reports. The same are dated 20th June, 2025.
5. I have considered the submissions of both learned counsels for the prosecution and defence. I have also considered the pre-bail reports dated 20/6/2025. Indeed, the accused persons have pleaded not guilty to the charges herein and thus ipso facto they are deemed innocent until proved guilty. Under Article 49 (1) (h) of the Constitution, an arrested person is entitled to be released on bond pending a charge or trial unless there are compelling reasons not to be released to be advanced by the prosecution. The prosecution have already sought to challenge the release of the accused persons on bond and have filed the requisite affidavits in that regard which is dated 29/5/2025 the gist of which is inter alia; that the accused persons are a flight risk due to the gravity of the offence and the hostility of the local community and that their homes have been burnt down; that the places of abode for the accused persons are unknown; that the security of the accused persons is at risk since the members of public are still hostile with them; that the accused persons are likely to interfere with witnesses who are well acquainted with them; that the phone data of the accused persons are yet to be received from the Crime Research and Investigation Bureau (CRIB); that the accused persons should remain in custody until the case is finalized. I find the issue for determination is whether the prosecution's objection to the release of the accused persons on bond pending trial has merit.
6. As noted above, the offence of murder is bailable unless the prosecution has presented compelling reasons warranting the accused not to be released on bond pending trial. Already, the prosecution have presented an affidavit dated 29/5/2025 in opposition to the release of the accused persons on bond. It is also necessary to look at the pre-bail report dated 20/6/2025 regarding the circumstances obtaining on the ground. Indeed, pre-bail reports are used as a guide by the courts whenever it seeks to determine the release of the accused persons on bond pending trial or appeals. The said reports indicate inter alia; that the nine victims perished in the fire which consumed their homes at night as they slept; that the accused persons homes were burnt down by irate villagers and that they currently do not have specific places of abode; that the community is still hostile with the accused persons who risk being lynched by members of public should they set foot in the area; that the accused persons are likely to interfere with witnesses some of whom are their relatives should they be released on bond; that the probation officer recommends that the accused persons should not be released on bond until conclusion of their case.
7. It is noted that Article 49(h) of the Constitution is the fall back ground whenever the court has to consider the release of accused persons on bond pending trial and in which the prosecution have to



present compelling reasons why such an accused person should not be released on bond. While the court has to take this into account, the court also must consider the provisions of Section 123A of the [Criminal Procedure Code](#) which gives the parameters for the grant of the right to bail as follows:

1. Subject to Article 49(1)(h) of the 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;
 - (b) should be kept in custody for his own protection.
8. The considerations in determining whether or not to grant bail are set out in [Kenya Judiciary's Bail and Bond Policy Guidelines](#), March 2015 at p. 25 which sets out judicial policy on bail as follows:

The following procedures should apply to the bail hearing:

- (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:
 - b. That the accused person is likely to fail to attend court proceedings; or
 - c. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - d. That the exception to the right to bail stipulated under Section 123A of the [Criminal Procedure Code](#) is applicable in the circumstances; or
 - e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - f. That the accused person is likely to interfere with witnesses or evidence; or
 - g. That the accused person is likely to endanger national security; or
 - h. That it is in the public interest to detain the accused person in custody.
9. From provisions of Article 49 (1) (h) of the [Constitution](#), the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since the [Constitution](#) expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail. What the compelling reasons are, however, depend on the circumstances of each case. The mere fact that the offence with which an accused is charged carries a serious sentence



is however not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to fail to attend for his trial. The issue for the court's consideration is whether or not the accused will attend the trial and whether or not the free and fair trial can be achieved notwithstanding the release of the accused on bond.

10. In the Zimbabwean case of *S v. Nyaruviro & Another* (HB 262-17, HCB 122-17, XREF CRB 1454A-B-17) [2017] ZWBHC 262 (31 August 2017), the Court held that:

“The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established where there is a likelihood that the accused, if he or she were released on bail, will

- (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
- (ii) not stand his or her trial or appear to receive sentence; or
- (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (iv) undermine or jeopardize the objectives or proper functioning of the criminal justice system, including the bail system... the ties of the accused to the place of trial; the existence and location of assets held by the accused; the accused's means of travel and his or her possession of or access to travel documents; the nature and gravity of the offence or the nature and gravity of the likely penalty therefore; the strength of the case for the prosecution and the corresponding incentive of the accused to abscond”.

11. Again, in the case of *Kelly Kases Bunjika v. Republic* [2017] eKLR the court held;

“It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused person is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his “constitutional right to be granted Bond/Bail on reasonable and favourable terms.”

12. Upon consideration of the sentiments of both prosecution and defence counsels as well as the pre-bail reports, it has emerged that the ground is still quite hostile for the accused persons whose homes have razed down by the irate villagers following the killing of the nine family members. It has also emerged that the witnesses who are set to testify for the prosecution are related to the accused persons and who are likely to be interfered with by the accused persons. Again, the issue of lack of fixed place of abode militates against an order for release. Further, the places claimed to be abodes for the accused persons in Kibera Nairobi may pose the challenge in tracing them and it will be a gargantuan task for those pursuing them in the event they fail to turn up for their trial. Further, it has emerged that the lives of the accused persons are at risk if they are released since the irate members of public are waiting to lynch them as soon as they set foot in the area. There are therefore some reasons which are compelling for the denial of bond at this stage of the proceedings. It would be appropriate to wait for the crucial witnesses to testify before the defence can seek for review of bond terms.



13. In view of the foregoing observations, it is my finding that the prosecution's request for the denial of bond for the accused persons herein pending trial has merit. The same is allowed. The accused persons request for bail at this stage is declined but they are at liberty to renew their quest for bond once the key witnesses have testified.

DATED AND DELIVERED AT SIAYA THIS 18TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of :

Christopher Okello Owino 1st accused

Roseline Atieno Okello 2nd accused.

Obado for both accused.

M/s Kerobo for Respondent.

Okumu Court Assistant.

