



**Republic v Kariuki & 2 others (Criminal Case E012 of 2025)  
[2025] KEHC 10691 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10691 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL CASE E012 OF 2025  
FN MUCHEMI, J  
JULY 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOEL GITHIKA KARIUKI ..... 1<sup>ST</sup> ACCUSED**

**STEPHEN CEGE MAINA ..... 2<sup>ND</sup> ACCUSED**

**DAVID KIRAGU THUO ..... 3<sup>RD</sup> ACCUSED**

**RULING**

**Brief Facts**

1. The accused persons face the charge of the offence of murder contrary to section 203 as read with 204 of the *Penal Code*. The particulars of the offence are that on the night of 28<sup>th</sup> of January 2025 at Munyu area within Thika East Sub-County in Kiambu County jointly with another not before the court murdered James Njenga Nduta. On 8<sup>th</sup> May 2025 the accused persons entered a plea of not guilty.
2. The prosecution filed an Affidavit of Compelling Reasons dated 8<sup>th</sup> May 2025 sworn by PC Wycliffe Nyamweya who is the investigating officer in the instant matter. He deposes that the 1<sup>st</sup> accused person if released on bond may interfere or frustrate the main suspect's apprehension as he is still at large. The deponent further states that the members of the public may retaliate the death of the deceased and harm the accused persons. As such, the office deposes that the accused persons ought to be detained for their own safety. The investigating officer is apprehensive that the accused persons shall abscond if released on bail as they are facing a serious offence attracting a severe sentence.
3. In opposition to the Affidavit in Opposition to Bond, the accused persons filed Replying Affidavits dated 5<sup>th</sup> June 2025 and 13<sup>th</sup> May 2025 respectively. The 1<sup>st</sup> & 2<sup>nd</sup> accused persons state that there are no compelling reasons provided by the prosecution to deny them their constitutional right to be admitted



- to bail or bond. The accused persons state that they have a fixed abode close to the jurisdiction of the court where they shall be living with a close relative as established in the social inquiry report.
4. The accused persons aver that they have no capacity or intention to interfere with prosecution witnesses or the community as their place of abode shall be away from the crime scene.
  5. It is further deposed that the accused persons are the breadwinners in their families which have been greatly inconvenienced by their time in remand. The accused persons further state that they are ready and willing to abide by any terms that the court may impose as a precondition to their admission to bail or bond.
  6. The 3<sup>rd</sup> accused person deposes that the investigating officer has offered generalized reasons to deny him bail and has failed to provide evidence of his wrong doing for him to be denied bail or bond. The 3<sup>rd</sup> accused argues that the allegation that he may interfere with the apprehension of the main suspect who is at large is an assumption with no factual basis. He further states that the allegation that members of the public may retaliate is vague as well as the investigating officer has not stated who the said members of the public are and what they have done to show that they intend to harm him.
  7. The 3<sup>rd</sup> accused person states that he does not reside or operate any business in Munyu area where the offence occurred and neither does he have any relations with the members of the public in the said area.
  8. The 3<sup>rd</sup> accused person further states that he does not know any of the witnesses and neither has he contracted any of them. Further, the allegations by the investigating officer that there are high chances of him absconding, is not a compelling reason to deny him bail or bond.
  9. The 3<sup>rd</sup> accused person avers that he is ready and willing upon being granted bond to appear before any court whenever he is required or directed to abide by such other terms as the court may order when granting bail to him.
  10. Parties put in written submissions.

### **The Prosecution's Submissions**

11. The prosecution relies on Article 49(1)(h) of *the Constitution*, Section 123A of the *Criminal Procedure Code*, the Bail and Bond Policy Guidelines and the case of Michael Juma Oyamo & Another vs Republic [2019] eKLR and submits that the prosecution has presented compelling reasons to warrant the denial of bail or bond to the accused persons. The prosecution submits that the accused persons may interfere with the prosecution witnesses as they know the home of the deceased person where some of the key witnesses reside. There is a likelihood that the accused persons may threaten the prosecution witnesses who will in turn not be free to give their testimony.
12. The prosecution refers to Section 123(2)(b) of the *Criminal Procedure Code* and paragraph 4.9 of the Bail and Bond Policy Guidelines and submits that the accused persons lives are in danger as tension and hostility is still present on the ground and the community may retaliate if they are released on bond. The prosecution submits that the main or principal offender is still at large and should the accused persons be released on bond, they may interfere with her apprehension.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons' Submissions.**

13. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons rely on Article 49(1)(h) and 50(1) of *the Constitution*, Section 123(3) of the *Criminal Procedure Code* and Section 123A of the *Criminal Procedure Code* and submit that they have a right to be released on reasonable bail or bond terms as they are presumed innocent until proven guilty.



14. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons submit that they are not a flight risk as they have a fixed place of abode close to the jurisdiction of the court and which is far away from the alleged crime scene therefore there is no fear of their interference with the community.
15. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons submit that there has been no previous offences committed by them and thus they ought to be granted reasonable terms on bail or bond.

### **The 3<sup>rd</sup> Accused Person's Submissions**

16. The 3<sup>rd</sup> accused person relies on Article 49(1)(h) of *the Constitution* and the case of Republic vs Danford Kabage Mwangi [2016] KEHC 2516 (KLR) and submits that the prosecution has not demonstrated any compelling reasons to warrant denial of bail or bond. The 3<sup>rd</sup> accused person submits that the reasons given by the prosecution are generalized as the prosecution has not addressed each accused person independently noting that each accused person's circumstances are different from that of the other.
17. The 3<sup>rd</sup> accused person submits that the prosecution has not availed any intelligence report citing any threats towards him by members of the public. Further, no particular area has been cited where the said threat exists. Further, the 3<sup>rd</sup> accused person argues that he does not reside or do business in Munyu area where the offence was committed, which fact has not been controverted by the prosecution.
18. The 3<sup>rd</sup> accused person submits that the prosecution has not provided any incident of him attempting to reach the witnesses or posing any threat to the witnesses. Further, the prosecution has not disclosed why the said witnesses cannot be accorded witness protection as provided for by the *Witness Protection Act*.
19. The 3<sup>rd</sup> accused person submits that the prosecution has not demonstrated through evidence that he will or is likely to abscond court.

### **The Law**

#### **Whether the reasons for opposing bail are merited in terms of Article 49(1)(h) of *the Constitution*.**

20. Article 49(1)(h) of *the Constitution* provides that:-

An accused 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.
21. It follows that the right to bail is not absolute and where there are compelling reasons, that right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exists compelling reasons to deny an accused person bail.
22. 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 thus:-

“ 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, 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.”

23. In *Republic vs Fredrick Ole Leliman & 4 Others* [2016]eKLR the court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of *Ng’ang’a vs Republic* 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the *Criminal Procedure Code* (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

- a. The accused will fail to turn up at his trial or to surrender to custody;
- b. The accused may commit further offences; or
- c. He or she will obstruct the course of justice

The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
- b. The strength of the prosecution case;
- c. The character and antecedents of the accused;
- d. The likelihood of the accused interfering with prosecution witnesses.”

24. The issue that arises is whether the reasons adduced by the prosecution are compelling reasons such that the court should not grant bail pending trial.

25. The prosecution has argued that the accused persons shall interfere with prosecution witnesses and that members of the public may retaliate with violence the death of the deceased in the event that they are released on bond. It was further argued that they may frustrate the apprehension process of the main suspect who is still at large.



26. In regard to the said allegations, the prosecution did not demonstrate by way of adducing evidence that such a thing was likely to happen. In the case of R vs Joktan Mayende & 3 Others (2012) eKLR, the court in considering the scope of Article 49(1)(h) stated as follows:-

The phrase “compelling reasons” denote that the reasons are forceful and convincing as to make the court feel strongly that the accused should not be released on bond. Bail should therefore not be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.

27. The prosecution in my view, has failed to present any cogent evidence to support the allegations in the affidavit of compelling reasons. Against any of the accused persons. Having carefully considered the grounds relied on, it is my view that the reasons given do not pass the test set out under Article 49(1) (h) of *the Constitution*.

28. Accordingly, I am of the considered opinion that the prosecution has not proved on a balance of probabilities that there are compelling reasons to warrant the denial of bail to the accused persons

29. I therefore make the following orders: -

- a. That each of the accused shall be released on bond of KSh.1,000,000 with one suitable surety.
- b. That the accused persons shall not leave the jurisdiction of this court without its permission.

30. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI**  
**JUDGE**

