



**Republic v Kirema (Criminal Case 18 of 2018)
[2025] KEHC 11610 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE 18 OF 2018**

**RL KORIR, J
JULY 17, 2025**

BETWEEN

REPUBLIC RESPONDENT

AND

SILAS MWANGI KIREMA ACCUSED

RULING

1. The Applicant Silas Mwangi Kirema is the 1st Accused in Criminal Case No. 18 of 2018. He was charged along with his ten co-accused with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The victim of the offence was one Delina Gacue.
2. In a Judgement dated 24th February 2025, the trial court [Gitari J] found all the Accused guilty and convicted them of the offence of murder. The Court also went ahead and cancelled the bond earlier granted to the Accused and ordered that they held in custody to await sentencing proceedings.
3. The Applicant has now filed an Application seeking orders that:-
 - i. Spent
 - ii. That the Honourable Court be pleased to set aside orders issued on 24th February, 2025 when the Judgement was delivered and reinstate the bond terms for the 1st Accused person which were issued on 17th December, 2018 by Judge Limo and approved by the Deputy Registrar on 24th December, 2018 in order to conduct the burial of the late wife namely Doris Makena Kirema and take care of the infant and other young children as the matter is pending sentencing.
 - iii. That the Honourable Court do grant orders to the 1st Accused Person/Applicant and he shall undertake to attend court without fail.



- iv. That this Honourable Court may impose its terms and consider the 1st Accused Person/Applicant and reinstate the bond terms which were issued on 17th December, 2018 and approved by the Deputy Registrar Hon. Kahara on 24th December 2018.
4. The Application is brought on the grounds that:-
 - a. That the 1st Accused Person/Applicant has been remanded at Kathwana G.K. Prison since 24th February, 2025 pending sentencing by this Honourable Court.
 - b. That upon the circumstances which are beyond his control the 1st Accused Person/Applicant is applying for setting aside the orders issued on 24th February, 2025 to have time and conduct burial ceremony of his beloved wife who died and left their infant and unattended young siblings.
 - c. That the 1st Accused person/Applicant shall continue to attend court on the dates provided for sentencing or any other mention dates this Honourable Court is going to grant.
 - d. That the 1st Accused Person/Applicant shall honour the bond terms to be imposed by this Honourable Court.
5. The Application is supported by the sworn affidavit of the Applicant dated 7th May, 2025 in which he has made various averments. The Applicant stated that his wife passed on during child birth on 16th April 2025 leaving their newly born infant. That the court may review the orders issued on 24th February 2025 cancelling his bond and reinstate the orders granted by Limo J on 24th December granting him bond.
6. The Applicant annexed the Burial Permit [SMKI], Birth Notification [SMK2], a letter from Chuka County Referral hospital [SMK3] and previous proceedings where he was granted bond.
7. The Application was opposed by the Republic through the sworn Affidavit of Judy Rukunga Prosecution Counsel. Learned prosecution Counsel averred that the Accused had been convicted of a serious offence of murder and was awaiting sentence. That the sentence for murder was serious and there was no demonstration of measure taken to ensure the Accused's attendance.
8. Parties were directed to file submissions and they duly complied.
9. In submissions dated 29th May 2025, the Applicant's Counsel stated that the Applicant had enjoyed bond terms during the trial. She reiterated the grounds that the circumstances currently facing the 1st Accused were beyond his control and stated that the Accused would honour any bond terms imposed by the honourable court. The Applicant identified the only issue being whether the Applicant was entitled to bail/bond pending sentencing. Counsel relied on the case of Dominic Karanja v Republic [1986] KLR 612 and Jivraj Shah v Republic [1966] KLR 605.
10. Counsel further submitted that the Applicant had properly moved the court and established exceptional circumstances warranting the court's consideration. They submit that the Prosecution had not shown any reason to justify denial of the orders sought.
11. The Respondent's submissions were dated 29th May 2025. They submitted that the Accused's right to bail under Article 49[i] was now at the discretion of the court as he had been convicted by a competent court. That the threshold for the grant of bail was now higher as the presumption of innocence no longer applies.



12. Counsel submitted that having been convicted and awaiting sentence the Applicant would have pre disposition to abscond. She urged the court to balance the rights of the Accused against those of the victim and deny the Applicant bail.
13. At the hearing of the Application on 30th May, 2025, Defence Counsel Ms Magara urged the position that the Applicant was deserving of the orders sought and that there was no justification for denying him bail since he had attended court dutifully and would continue.
14. Prosecution Counsel Ms Rukunga urged that the circumstances had changed upon the conviction of the Accused. That the presumption of innocence no longer applied.

Analysis and Determination

15. The only issue for my determination is whether or not the Accused should be granted bail pending sentence.
16. The Applicant has come under Article 49[i] [h] of *the Constitution* which provides: -
 - “ 49[i] the reason for the arrest;
 - [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.”
17. Section 356 of the *Criminal Procedure Code* provides:-
 - “ 356. The High Court, or the subordinate court which has convicted or sentenced a
[1] person, may grant bail or may stay execution on a sentence or order pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non- performance of any act or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.
 - [2] If the person in whose favour bail or a stay of execution is granted under this section is ultimately liable to a sentence of imprisonment, the time during which the person has been released on bail, or during which the execution was stayed, shall be excluded in computing the term of his sentence, unless the High Court, or failing that court the subordinate court which convicted and sentenced the person, otherwise orders.”
18. The above Section shows that the court which has convicted or sentenced an Accused person still has power to grant bail to such a person. In Paul Wainaina Boiyo alias Sheki Nairobi Criminal Case No. 8 of 20224 [2014] eKLR the Court stated:-

“ An application for bail pending appeal is predicated firstly on the constitutional right to liberty; secondly, on a demonstration of exceptional circumstances and thirdly, it is an exercise of judicial discretion taking into consideration the circumstances of the case.....”
19. It was common ground that the conviction of the Accused was not a bar to the exercise of his right under Article 49 [1] [h] of *the Constitution*. The point of divergence as submitted by the Prosecution was that the Accused no longer enjoyed the presumption of innocence as he had been convicted by a competent court.



20. As stated earlier the Accused was duly convicted by Gitari J who also cancelled his bond terms pending sentencing. The present Application therefore though not stated as such, was a review application. In *Republic v Erick Mungera Isabwa & 6 Others*, the Court held that:-

“At review stage the Applicant bears the burden to show cause on a balance of probability why the court order should be vacated, this can be established by showing either an error in principle in the order of material change in circumstances that would make it unjust not to vacate the order.”

21. The Applicant has urged that his circumstances have changed because he has lost his wife and their infant child needed parental care. He also wished to be freed so as to go and bury her and provide for the family.

22. I have considered the Application. The starting point is that the right to bail under Article 49 was not an absolute right and could be curtailed by the existence of compelling reasons.

23. The Court [Gitari J] cancelled the Accused bond upon conviction for the offence of murder. Needless to state this is an offence for which one may be sentenced to death. The temptation to abscond would therefore be higher than when one has not been convicted. This becomes a compelling reason not to grant bail.

24. This Court empathizes with the Applicant’s family circumstances. However, the Applicant has been convicted of a serious offence and is awaiting sentence. The court’s discretion must consequently be exercised judiciously.

25. Balancing the scales of justice, the order that commends itself to me is to decline to grant the Applicant bail pending sentence. The Application is disallowed.

26. Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 17TH DAY OF JULY, 2025.

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence Ms Magara for the 1st Accused, Miss Rukunga for the State/Respondent Muriuki [Court Assistant].

