



**Wanjiku v Republic (Criminal Case 19 of 2017)  
[2025] KEHC 10667 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10667 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 19 OF 2017**

**TW OUYA, J  
JULY 22, 2025**

**BETWEEN**

**JOB IRUNGU WANJIKU ..... APPLICANT**

**AND**

**REPUBLIC ..... PROSECUTION**

**RULING**

1. The accused, Job Irungu Wanjiku is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. It is alleged that on the 2<sup>nd</sup> May 2017 at Makuyu Village , within Murang'a County, the accused murdered Salah Wangari Nyambura.
2. The records of this court reveal that the accused was arrested on 3<sup>rd</sup> May 2017 and arraigned before Kigumo Lower Court on 18<sup>th</sup> May 2017 when the investigating Officer sought for 7 more days before presenting him in court, He was presented in court on 5<sup>th</sup> June 2017 but could however not take plea on the said date, as he still awaited a mental assessment report.
3. Plea was eventually taken on 10<sup>th</sup> July 2017, after the accused was declared fit to stand trial. Upon taking plea, he denied the charges and a plea of Not Guilty was entered. From the record, the accused filed an application under certificate of urgency on 9<sup>th</sup> November 2022 seeking to be admitted to bond. The same was however declined by court pending testimony of a certain witness(es).
4. The accused's counsel, Mwangi Wanjiku, has since renewed the same application while relying on a pre bail report dated 17<sup>th</sup> June 2025.
5. This application was canvassed through oral submissions by counsel for the Defence and for the Respondent. Counsel for the Defence has submitted that the accused is not a flight risk and that the pre bail report filed in court is in favour of the accused being admitted to bond pending his trial.



6. The Respondent/State Counsel made oral submissions opposing the application for bail. He takes issue with the probation officer for recommending to the court that the accused “may be admitted to bond on reasonable terms” which he states is wrong as the officer’s duty to the court should remain neutral. He also states that the report did not address the views of the victim’s family who are still in shock and are apprehensive for their safety.
7. Counsel raises further one compelling reason that a key witness who is a child is yet to testify. He states that the minor who was the only eye witness to the incident was only 8 years old at the time and is now 15 years old. That the accused was the step father to the witness whom the accused also threatened during the commission of the offence. Counsel argues that there is a high likelihood of interference with this particular witness in the event that the accused is admitted to bond before the witness’ testimony is taken.
8. Counsel states that the committal bundle was served upon the defence together with the Investigating Officer’s (SGT Dancun Waruturu) statement that the accused had threatened the witness during the commission of the offence.
9. Based on the above, the learned prosecution counsel opposed the application for bail on grounds that there was a likelihood that the accused would interfere with the key prosecution witness who his close family member. He urged the court to consider allowing time for the key witness who is a child to give his testimony before considering the accused’s application for bond/bail.
10. I have carefully considered the application and the brief oral submissions by the learned prosecution counsel opposing the admission of the applicant to bail. I have also duly considered the contents of the pre-bail report filed before this court on 16<sup>th</sup> June 2025. Having done so, I find that the main issue for determination before this court is whether the prosecution has established compelling reasons, warranting the denial of bail or bond to the accused pending his trial.
11. It is trite that under Article 49 (1) (h) of the Constitution of Kenya, 2010, an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. Article 49 (1) (h) of the Constitution stipulates as follows: “an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
12. From the above provision of the Constitution, it is evident that whereas an accused person has a constitutional right to be released on bail or bond pending trial, the said right is not absolute and may be curtailed where the prosecution demonstrates the existence of compelling reasons warranting denial of that right.
13. What constitutes compelling reasons was discussed in the case of Republic versus Francis Kimathi (2017) eKLR; where the court expressed itself as follows: “There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution.”
14. Having stated that, the factors that should guide this court when considering an application for bail or bond pending trial are contained in Section 123A (2) of the Criminal Procedure Code, as follows: “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.”
15. Additionally, The [Judiciary Bail and Bond Policy guidelines, 2015](#), at page 25, paragraph 4.26, also provides for the factors that could persuade the courts to deny an accused person bail or bond pending his trial. It states as follows: “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;
  - 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.”
16. In this case, the sole reason advanced by the prosecution to deny the accused person bail, is that there is a likelihood of the accused interfering with one key prosecution witness who happens to be a child aged 15 years at the moment. The prosecution has mentioned specifically that the child (name withheld), who is a stepchild to the accused, was threatened by the accused at the time of commission of the offence.
17. Counsel urged the court not to rely entirely on the probation report as it was not comprehensive as it does not address the issue of security of witnesses neither does it address the concerns of the victim’s family who are still apprehensive for their security. It is also learned counsel’s view that the victim’s family were not consulted during the preparation of the report.
18. I have also considered the bail/bond assessment report which has incidentally dedicated a whole paragraph to the victim’s family. Other than giving the family background of the deceased, the report points out the family’s concerns. In particular, it states, “The victim’s family are opposed to his being released on bond. They say that they fear he may harm them should he be released on bond.” However, the report concludes that the accused is suitable for bond and that the same is recommended.
19. It is well settled, that for the prosecution to succeed in persuading any court that an accused person is likely to interfere with prosecution witnesses, it must place material before the said court to demonstrate the said interference, be it actual or perceived. It is not enough for the prosecution to merely state that the accused person is likely to interfere with witnesses, they must adduce before court evidence of the alleged interference.
20. This position was restated by the court in the case of [Republic versus Dwight Sagaray & 4 others](#) (2013) eKLR; as follows: “As I have held before, interference with prosecution witnesses is in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the



trial and is an affront to the administration of justice. For the prosecution to succeed in persuading the court on this criterion however, 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 familial relationship between the accused and witnesses among others.”

21. Additionally, the court in *Republic versus Joktan Mayende & 3 others* [2012] eKLR; stated as follows regarding the issue of witness interference: “All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”
22. I have studied the records and noted that one the key prosecution witness who is a child is yet to testify. The fact that the said witness is from the in the same family with the accused person is a red flag on the possibility and high chances of witness interference which cannot be wished away. This court is however concerned that the Respondent counsel did not adduce evidence as to the standard required by the law at least by filing a replying affidavit. Nonetheless, I note that this trial is not about a contest between the accused and the state but rather a delicate balance between the rights if the accused and the interest of justice to the victim and her family.
23. interfere with the said witnesses cannot be said to be farfetched, considering that one of the factors that would lead the court to assume that there is a likelihood of witness interference is if the accused and the prosecution witnesses reside within the same locality.
24. I am therefore of the view that it would not be in the interest of justice if the accused is released on bond at this juncture. Flowing from the foregoing, I am of the considered view that the prosecution has demonstrated the existence of compelling reasons warranting the denial of bail or bond to the accused person. This position should be reviewed as soon as the witness in question has testified and the court is properly moved to the effect.
25. That being said, I noted that the accused has been in custody since 3<sup>rd</sup> May 2017 since he was first presented at Kigumo Court. It is now seven years down the road and only one witness has since testified on 23<sup>rd</sup> April 2024. It is also not in the interest of justice and an affront to the accused ‘s right under the *Constitution* Article 50(2) for the accused person to wait for trial for an inordinate period no matter how justified the circumstances may be.
26. The court hereby proceeds to make the following orders:
  - i. Application for bond dismissed.
  - ii. Matter to be set down for hearing on priority for basis for two consecutive dates.
  - iii. Prosecution to bond all witnesses.

**DATED, SIGNED AND DELIVERED PHYSICALLY THIS 22<sup>ND</sup> JULY, 2025.**

**HON. T. W. OUYA**



**JUDGE**

For Applicant.....Job Irungu Wanjiku (in person)

For Respondent.....P. Mwangi

COURT ASSISTANT.....Brian

