



**Republic v Dibatacho (Criminal Case E051 of 2024)  
[2025] KEHC 13370 (KLR) (Crim) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E051 OF 2024  
AM MUTETI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DIBATACHO ..... ACCUSED**

**RULING**

1. The accused person is charged with murder under Section 203 as read with 204 of the Penal Code.
2. The accused person has proved this court for grant of bail pending trial.
3. The accused has cited the provisions of Article 49 (1) (h) of *the Constitution* and Section 123 of the Criminal Procedure Code.
4. The accused person contends that the right to bail is a constitutional right that should only be limited if there are compelling reasons to do so.
5. The accused has indicated willingness to submit to the authority of this court and released on bail and he undertakes not to interfere with witnesses once released.
6. The accused is said to be aged 19 years and has no means nor capacity to interfere with the case.
7. The prosecution through MS Njoroge prosecution counsel opposed the release of the accused on bail citing the fact that he does not hold any identification document and that he has no known place of abode.
8. The prosecution contends that if released on bail the accused is likely to vanish and never return to this court for trial.



9. The prosecution relied on the affidavit sworn by No. 101370 PC Gilbert Langat of DCI Starehe sworn on 22/5/2025 in which he deposes that the accused person is a flight risk and if released on bail it would be difficult to locate him should he fail to attend court.
10. Mr. Githui for the accused admitted that the accused person has no identification documents but he insisted that the accused remains under the care of the mother and that he would be able to attend court once released on bail.
11. It is clear from the submissions by counsel for the state that the primary concern by the state is that the accused person is a man who ought to be very hard to trace in society if released on bail.
12. It is not disputed that he was arrested in Korogocho where he lived with his mother although he was arrested by members of public.
13. The primary consideration in an application for bail is whether an accused person would return to face his accusers once released.
14. The court acknowledges that though liberty is precious courts must exercise due care in determining applications for bail in order not to compromise the interests of justice.
15. In considering whether to limit the right to bail the court must strike a delicate balance by considering that those that deserve bail are timeously released from custody to avoid keeping them in custody when they need not to be held.
16. Article 50 (2) (a) of the constitutions guarantees the presumption of innocence and the court must ensure that the presumption is not treated as a mere aspiration.
17. The fact that one does not hold an identity document cannot be a compelling reason more so if that person at the time of the commission of the offence had not attained the age of majority or had just attained the age of majority.
18. This court takes judicial notice of the fact that the registration of persons is a continuous exercise and quite a sizeable number of youth in our country decry the slow pace of registration.
19. It is a matter of local notoriety to find many of our youth walking around in the streets without identification documents.
20. The accused person was barely 18 years at the time he was apprehended as per the report dated 3<sup>rd</sup> October 2024 prepared by Dr. Kirigi of Mbagathi hospital thus it is no surprise that he did not have an Identity card or a passport.
21. The court in *Kelly Kases Bunjika vs. Republic* [2017] eKLR, Muriithi, J was of the view that:

“The second limb of paragraph (b) of sub-section (1) of section 123A must be read separately and disjunctively from the first part so that the Court considers whether the accused ‘if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody’...Of course, the accused is standing trial for all the alleged offences of robbery with violence, escape from lawful custody and assault, and he is entitled to the presumption of innocence. It is no derogation of his right to that presumption of innocence that he is refused bail; it is merely the exercise of the Court’s mandate to grant bail as constitutionally empowered. It only means that the Court finds a compelling reason within the meaning of *the Constitution* to refuse bail in the particular case.”



17. 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:
  - 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.

18. I associate myself with the view expressed by Muriithi, J in *Kelly Kases Bunjika vs. Republic* (supra) that:

“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.”

- 22. In the present case I am not persuaded that there are compelling reasons to deny bail. The accused persons circumstances appear to be what triggered the opposition to his release on bail. The primary focus should be whether or not he will turn up for trial once released.
- 23. To deny bail on account of one not possessing identification documents would be tantamount to suggesting that all juveniles who come into conflict with the law would not be entitled to release on bail.



That would certainly be a carte blanche denial of bail for all persons who may for very legitimate reasons not be holding any identification documents. *The constitution* under Article 49 reads “an arrested person” and that statement is not to be qualified by any means whatsoever to read any person who posses identification documents.

24. The state cannot run away from its duty to register persons thus any person who is found not to have any registration documents cannot have his or her rights taken away for reasons of non -registration. The right to bail is very closely tied to the right to a fair trial and courts must ensure that the right is vigorously defended, upheld and or promoted. Bail should only be curtailed where the reasons advanced by the prosecution are compelling enough. Trials take long in this country and it would be grossly unfair to deny bail on flimsy grounds.
25. The concerns raised by the prosecution can be adequately addressed through conditions that this court will grant to ensure that the accused person turns up for his trial.
26. The application is therefore granted on the following conditions:-
  - a. The accused shall be released on a bond of Kshs. 500,000 plus one surety of a similar amount
  - b. The accused persons mother shall execute a bond of Kshs.200,000 undertaking to produce the accused person in court whenever required.
  - c. The accused persons parents shall provide details of their place of residence in Nairobi and their upcountry home.
  - d. The parents shall avail a letter from the local chief confirming that they reside in the location provided to court.
  - e. The parents shall provide copies of their national identity cards to the court.
  - f. The accused person shall before release from prison custody be escorted by the prison authorities to the nearest office of the registrar of persons for registration purposes and copies of the registration receipt shall be availed to the Deputy Registrar of this court before the signing of the release order.
  - g. The Officer commanding Nairobi remand shall ensure that the accused person is escorted for registration purposes within 7 days of this order.
27. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the Presence of: -

Kiptoo: Court Assistant

Ms Njoroge for the state

Ms Mbuvi absent for the 1<sup>st</sup> Accused

Ongangi holding brief Nyabira for 2<sup>nd</sup> Accused

1<sup>st</sup> & 2<sup>nd</sup> Accused present

