



**Republic v Gitonga (Criminal Case E097 of 2021)  
[2025] KEHC 13693 (KLR) (Crim) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13693 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E097 OF 2021  
MW MUIGAI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**FRANCIS KINYUA GITONGA ..... ACCUSED**

**RULING**

**Background**

1. This matter originated with the Accused person charged with the offence of murder on 11/12/2021 and he pleaded not guilty and was remanded in custody awaiting trial.
2. The matter has attracted strange, weird and unprocedural processes as depicted by the fact that the same matter is the subject of;
  - a. Court files, all skeleton files opened at different stages of proceedings; one opened before Hon.LJ Kavedza with proceedings that culminated with bail/bond Ruling of 24/10/2023. At pg 7 paragraph 17, the Court noted that the original Court file was lost, or misplaced and hence trial had not commenced since 2021.
  - b. Another skeleton Court file that contains several correspondences on the matter between Counsel, Court Registry Personnel and the JSC.
  - c. Another skeleton Court file also skeleton file that contains Applicant's List & bundle of Documents for Reconstruction of the Court file pursuant to Court orders of 13/6/20237 21/6/2023. The said Court file contains Affidavit to oppose bail/bond by PC Donald Baraka of DCI Kasarani, Respondent's & Applicant's Submissions on the issue of bail & bond, case-



law authorities on bail /bond and copies of charge/information, witness statements and expert reports.

- d. There is copy of Ruling on bail/bond by Hon.D.O Chepkwony LJ of 21/10/2022
- e. The Accused person/Applicant sought review of bail/bond Application as the ODPP despite opposing release of bail/bond, the Applicant has been in custody since 2021 and to date hearing has never taken off.
- f. This Court considered the circumstances subsisting and 2 Rulings by Hon LJ on compelling reasons to deny bail/bond more importantly, 4 witnesses were to testify first, then bail/bond is considered. Thus; this Court upheld the same position in the Ruling delivered on 11/6/2025.
- g. The glaring pertinent issue is that the Criminal Justice System, has denied the Accused person bail/bond, not commenced hearing of the trial from 2021 to date and at the same time misplaced the original Court file and opened skeleton files successively.
- h. The Constitution entitles each person citizen bail/bond unless prosecution proves compelling reasons by Article 49 of the Constitution; the Accused person is entitled to exercise of judicial authority as prescribed in Article 159 of Constitution and Fair Trial By Article 50 of the Constitution.

With the above background the following have been disclosed through recent proceedings before this Court;

### **Proceedings**

3. 11/6/2025- The Ruling by this Court withholding bail/bond for 4 witnesses to testify first. The Court granted orders that Hearing was on 28/7/2025 and bond/bail to be considered thereafter.

### **28/7/2025**

4. The hearing did not take of as ODPP stated that they were not ready to proceed. The current I.O had gone for a promotional course and he did not hand over the Police file for bonding of witnesses. They were ready to proceed in September 2025.[After Official High Court break- vacation August-September 2025]

Mr. Ojiambo for the accused person stated as follows;

The matter has not proceeded for hearing and he has been in custody since 2021. No single witness has ever testified and the accused has never been granted bail/bond and the matter delayed.

Ms. Tum ODPP – The matter has delayed we are informed circumstances. I apologize for requesting for adjournment.

Court – The matter has never taken off for the last 5 years and the court cannot condone the refusal of bail/bond on the basis of the hearing on priority of the protected witnesses who have not been availed for the 5 years to this Court. The accused person shall be released on bond/bail of Ksh. 300,000/- with 1 surety.

Hearing on 17/9/2025.



**17/9/2025**

5. Mr. Nyboma taking over the matter from Mr. Ojiambo –

The relatives of the accused person are doing valuation [of property] and we shall have him released on bail/bond.

6. Ms. Tum ODPP – We bonded 2 witnesses and they are not present in court and I pray for another hearing date to be able to bond witnesses. It has been difficult to bond witnesses and a related matter was heard and determined.

Court – The court file is placed aside.

3.45PM

7. Mr. Nyboma – The matter in court has been in court since 2021 and he has been in custody for 3 years and 11 months and the matter has been mentioned and scheduled for hearing many times specifically 9 times and mentioned 29 times. The Accused person was to be heard after 4 witnesses testified and none of them have testified to date. This Court granted bail/bond to the accused person. Now ODPP has not explained whereabouts of the witnesses and made an application for adjournment/leading to the Ruling that accused be released on bail/bond Ksh. 300,00/- Hon Kavedza LJ slated the matter for hearing and the matter has not proceeded 4 years the matter has never started. I went to study and came back and the Accused Person is still in court. The accused person is a young man and he would have made steps if he was not in Court. I rely on the following cases

1. HCC No. 1 of 2026 – Hon Ngugi Joel J. HCT ( as he then was)
2. Republic Vs. Mineh Wanjiku Ikibu delay of 4 years and 10 months and today is 10<sup>th</sup> hearing date. The prosecution could not trace the witnesses.
3. HCCC 32 of 2023 – Republic Vs. Fredrick Kipkorir Cheresk – plea taken – delay of 2 years no meaningful explanation.

We are praying the report for adjournment to be declined in light of prejudicial circumstances. If ODPP does not exercise discretion to withdraw under Section 87 CPC or 382 CPC or close the ODPP case we are left with no other to ask this court with the special circumstance to acquit him 210 CPC.

ODPP – Ms. Tum – related court file HCCR 53/2019 is in Milimani High Court. The same witnesses testified in that matter and we rely on the same witnesses and exhibits in this matter.

**22/9/2025**

8. Mr. Nyboma for the accused person – present

Ms. Tum ODPP The matter regarding HCT 53/2019 is one of Ali Hassan Ali – before Hon. K. Kimondo PJ Criminal Division and prosecution closed its case and is awaiting for the orders.

The incident therein is the same transaction that gave rise to this matter .

I have confirmed that 13 witnesses testified in the matter. Deputy DCIO Kasarani – Keseri is in court.

**23/9/2025**

9. Ms. Tum ODPP – present online



I perused the court file – I confirm court proceedings that there are no proceedings from 2021 and proceedings started in 2023.

Ms. Tum -I had the Deputy DCIO Kasarani yesterday in our offices to address the issue of missing Police file but it is now available and in the circumstance, we are ready to proceed and in the circumstance, I am ready to take a hearing date. Considering the court proceedings that the accused person took plea.

10. Accused – I was read the charges – December 2021.

Court – The court will deliver Ruling on the matter based on submissions made.

Any Party/Officer/Counsel who wishes to say anything may file with the DR. Criminal Division.

The Ruling will be delivered on 29/9/2025.

This Court is constrained to document verbatim the proceedings that reflect the various processes that have taken place. Although, this Court granted the Accused Person bail/bond of Ksh 300,000/- with 1 surety, the matter remains part of the Court's backlog 2021 and the hearing has never taken off with myriad of reasons; Court file missing, Police File missing and recently that another trial High Court Criminal Case 53 of 2019 Republic vs Ali Hussein Ali that is alleged to be before Hon.K.Kimondo PJ Criminal Division where 13 witnesses testified and Prosecution closed their case.

### **Disposition**

11. The Case is scheduled for hearing despite numerous problems to jumpstart the trial, the witnesses could not be availed, Police file lost now found, trial on the same basis transaction has been conducted, in the midst of all these challenges and promise to proceed,

12. This Court can only make informed decision after perusal of Court file High Court Criminal Case 53 of 2019 Republic vs Ali Hussein Ali and/or Ruling/Judgment. Secondly, the hearing is scheduled to commence 30 days from today. This is considered Last Adj

And consequential orders shall apply.

Hearing on 1/11/2025

**DATED SIGNED & DELIVERED IN OPEN COURT CRIMINAL DIVISION OF HIGH COURT ON 30/9/2025 VIRTUALLY /PHYSICALLY.**

**M.W.MUIGAI**

**JUDGE**

