



**Republic v Mbai (Criminal Case E025 of 2025)  
[2025] KEHC 13520 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKADARA  
CRIMINAL CASE E025 OF 2025  
J WAKIAGA, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN NDUNGU MBAI ..... ACCUSED**

**RULING**

1. The accused faces a trial for the offence of murder contrary to section 203 as read with section 204 of the Penal Code, the particulars of which are that on 15<sup>th</sup> March 2025 at Kayole in Nairobi County jointly with another not before the court, murdered Karen Wangui.
2. He pleaded not guilty to the charges and in compliance with the provisions of Article 49 (1) (h) of *the constitution*, the prosecution opposed the release of the accused on bond and in support thereof filed an affidavit sworn by PC Alex Keter in which he deposed that the deceased was aged eleven years at the time.
3. It was stated that the deceased mother moved in with the accused younger brother, with who she was staying with as husband and wife. That the accused was also living with them in the same rental house.
4. On the 14<sup>th</sup> march 2025, the deceased mother received a call from her school with the information that the same had stolen kshs 1000 from her class teacher, which information she gave to her husband, the accused brother, who started assaulting the deceased demanding that she admits to the allegations of theft.
5. When the accused reported from work, he joined his brother in assaulting the deceased allegedly to discipline her as the mother had failed to instil good virtues in her, leading to her death.
6. Immediately the accused brother learned that the deceased had died, he went into hiding and has never been found to date. That since the arrest of the accused, his friends and relatives kept warning



the mother of the deceased of dire consequences should she come forward to testify, leading her to contemplate relocating from the area for fear of her life and that some of their neighbours who had the commotion have developed cold feet and had indicated that they did not want to be involved in the matter.

7. It was contended that the accused used to work in Qatar until 2024 when he came back to Kenya to process new contract and should he be released on bond, he was likely to go back to Qatar and was therefore likely to be a flight risk.
8. The accused did not file any affidavit in response to the one by the State.
9. In compliance with the Bail and Bond policy guidelines, the court called for pre-bail report wherein it was contended that the accused maintained close ties with his family /siblings with his uncle offering to accommodate him should he be released on bond. He is married with two children .
10. On the victim impact , it was stated that the same was a grade four pupil at Kayole Adventist school and that her mother was still undergoing emotional pain from the loss of her only child and was planning to relocate outside the city.
11. The accused was known to the local administration and had no objection to his release on bond.

### **Submissions**

12. It was submitted by Ms Ogweno for the prosecution that the brother of the Accused who was living together with him and the deceased was still at large and therefore the accused too was likely to be a flight risk since he was living and working in Qatar.
13. Mr. Kamande for the accused submitted that there was no evidence that the accused had threatened witnesses and that the court can mitigate the same through conditions .

### **Determination**

14. Bond is a constitutional right of every accused person which may only be limited under Article 49(1) (h) where there are compelling reasons advanced by the prosecution to the satisfaction of the court on a balance of probability.
15. What constitute compelling reasons and the issues for the court consideration on the grant or otherwise of bond were stated by the Court of Appeal in the Case of Micheal J Oyamo versus Republic as follows :

...

..“ We have carefully considered the record of appeal, the submissions by counsel and the various authorities cited. Article 49(1) (h) of *the Constitution* states that an arrested person has the right “to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons”. It is therefore clear that such constitutional right can only be limited if the prosecution satisfies the court that there are compelling grounds to warrant its denial to an accused person. We wish to adopt the definition of what amounts to compelling reasons as defined by the High Court in R v Joktan Malende and 3 Others Criminal Case No. 55 of 2009 as follows:

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



According to the recently launched publication, Criminal Procedure Bench Book at pages 48 – 51 paragraph 105, compelling reasons may include the likelihood that the accused will fail to attend court; commit or abet the commission of, a serious offence; endanger the safety of victims, individuals or the public; interfere with witnesses or evidence; endanger national security or public safety; and where it is necessary for the protection of the accused.

Further, section 123 A(1) of the Criminal Procedure Code which is to be read with section 123 thereof provides as follows:

“ 123A(1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstances and in particular -

- (a) the nature and seriousness of the offence ;
- (b) the character, antecedents, associations and community ties of the accused person;
- (c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and;
- (d) the strength of the evidence of having committed the offence.”

Subsection (2) thereof stipulates that 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.”

This Court has had occasion to pronounce itself on all these constitutional and statutory principles regarding bail in *Republic v Nuseiba Mohammed Haji Osman* [2018] eKLR where the Court stated,

inter alia:

“Denial of a constitutional right is not a matter to be treated lightly and therefore any claims made against an accused person aimed at curtailing the constitutional right to liberty must not be made on speculation or conjecture.”

- 16. I am guided by the said principles as set out by the Court of Appeal and have nothing more useful to add to the now well settled jurisprudence save to say that I full agree with the same.
- 17. In this matter, the deceased was living together with the accused and his brother in the same house. The mother of the deceased who was cohabiting with the accused brother who has gone under has through the pre-bail report indicated that she has received threats from the accused relative who have told her that she will face unnamed consequences should she testify against the same and that the said threat is so real that she now intends to relocate from the city.



18. The accused brother who was participated with him in allegedly disciplining the deceased is still at large .
19. There is also the allegation contained in the affidavit in support of the denial of bond which the accused has not denied that the same has been living out of the country and whereas the sins of his brother should not be visited upon him , there is a likelihood of the same taking flight outside the court's jurisdiction , thereby jeopardizing his trial.
20. I am therefore satisfied that there are adequate compelling reasons advance by the prosecution on a balance of probability to enable the court deny the accused the enjoyment of his right to bond which I hereby do until after the mother of the deceased has testified and or his brother apprehended.
21. And it is so ordered.

**DATED SIGNED AND DELIVERED THIS 30th DAY OF SEPTEMBER 2025**

**J. WAKIAGA**

**JUDGE**

In the presence of

Court Assistant - Irene

Ms Ogwen for the State

Mr. Kamande for the accused

