Republic v Taalam & 5 others (Criminal Case E010 of 2025)
[2025] KEHC 13505 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13505 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KIBERA

CRIMINAL CASE E010 OF 2025

DR KAVEDZA, J

SEPTEMBER 30, 2025

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

SAMSON KIPROTICH TAALAM ..... 1ST ACCUSED

JAMES MUKHWANA ..... 2ND ACCUSED

PETER KIMANI ALIAS KIM ..... 3RD ACCUSED

JOHN NGIGE GITAU ..... 4TH ACCUSED

GIN AMMITON ABWAO ..... 5TH ACCUSED

BRIAN MWANIKI NJUE ..... 6TH ACCUSED

RULING

1. The six accused persons stand jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63, Laws of Kenya). The particulars of the offence as per the information are that on the night of 7th June and 8th June 2025 between 9.30 pm to 2 am at Central Police Station within Nairobi County, jointly with others, not before the court, murdered Albert Omondi Ojwang.

2. Upon arraignment, the accused persons all pleaded not guilty. They moved this Court seeking to be admitted to bail/bond on reasonable terms pending the hearing and determination of their case. In opposition to the application, the Office of the Director of Public Prosecutions, and learned counsel for the victims filed affidavits opposing the grant of bail.

3. In an affidavit sworn dated 14th June 2025 sworn by Justin Nyatete the principal investigations officer, file an affidavit opposing bail. He deponed exist compelling reasons as envisaged under Article 49(1)(h)

of the *Constitution* for denial of bail. It was averred, first, that the charge preferred is serious carrying the ultimate penalty of death upon conviction, which serves as a strong incentive to abscond if released. Secondly, it was contended that there exists a real and substantial risk of interference with witnesses. In this regard, the Court was invited to note that the 1st, 2nd, and 3rd accused persons are serving police officers of influence and authority within the community. Their positions, it was urged, create the likelihood of intimidation or improper influence over potential witnesses.

4. The prosecution further asserted that on the material day, the surveillance system located within the office of the 1st accused was interfered with, leading to the loss of crucial evidential material. Such tampering, it was argued, constitutes a direct act of obstruction and undermines the integrity of the investigation. In addition, the 4th accused was said to have exercised undue influence during his detention at Central Police Station, where he allegedly mobilised other detainees and maintained close ties with his co-accused, further raising the possibility of witness interference.

5. It was additionally averred that the accused persons are a flight risk. The 4th accused in particular was reported to have deserted the National Police Service, thereby demonstrating unwillingness to submit to lawful authority. The prosecution urged the Court to take into account the need to preserve the integrity of the ongoing investigation and the fairness of the trial process.

6. The State also emphasised broader considerations of public interest and safety. The death of the deceased sparked widespread demonstrations and public unrest across various parts of the country. Accordingly, it was submitted that continued detention of the accused persons serves not only the security of the general public but also the personal safety of the accused themselves, who might otherwise face reprisals.

7. In sum, the prosecution prayed that the Court decline to admit the accused persons to bail at this stage, stressing the constitutional balance between the presumption of innocence on the one hand, and the interests of justice, public order, and the rights of victims on the other.

8. Learned counsel, Mr. Juma, appearing for the victims, submitted that the constitutional right to bail is not absolute. He relied on Article 49 of the *Constitution*, which permits the Court to limit the right where compelling reasons are shown. Counsel urged that such reasons exist in the present case. He reiterated that the accused persons interfered with the surveillance system on the material day, thereby deliberately concealing crucial evidence of their involvement. According to counsel, this conduct demonstrated a conscious attempt by the accused to shield themselves from accountability after causing the death of the deceased.

9. On the issue of witness interference, Mr. Juma submitted that the first four accused, being police officers, occupy positions of influence and are well versed with the law and its processes. This, he argued, enhances the risk of intimidation or undue influence over witnesses, most of whom are drawn from the police station where the offence occurred. Counsel further noted that the deceased's family, particularly the father, has been living in fear since the matter gained public attention, as their residence is widely known. He maintained that continued detention of the accused would secure both the family's safety and the integrity of the proceedings.

10. The Law Society of Kenya, appearing as amicus curiae, equally opposed the application for bail. They submitted that Article 49(1)(h) of the *Constitution* recognises the right to bail subject to the existence of compelling reasons. They cited the case of Republic v Jacktone Oyugi Moyienda [2009] eKLR, which defined compelling reasons as forceful and convincing grounds that justify denial of bail. Such reasons include the risk of absconding, the likelihood of committing a further serious offence, threats to the safety of victims, interference with witnesses or evidence, and, where necessary, the protection

of the accused themselves. Reference was also made to section 123A of the Criminal Procedure Code, which obliges the Court to consider the seriousness of the charge when determining bail.

11. The L.S.K. further submitted that the gravity of the charge and the mandatory sentence of death upon conviction heighten the risk of absconding. It was submitted that these principles apply squarely to the instant case. Counsel concluded that the accused are not being subjected to discrimination but rather are being called to account in accordance with the law.

12. In rebuttal, Mr. Kang'ahi, learned counsel for the 1st accused, submitted that bail is guided by constitutional standards and statutory policy, and its denial requires strict justification. He conceded that the offence of murder is serious but argued that seriousness alone is not a compelling reason.

13. On the allegation of interference with material evidence, counsel maintained that no proof has been adduced as to who interfered with the surveillance system, and such matters can only be determined at trial. He emphasised that the framers of the *Constitution* deliberately provided that bail applies to all offences, notwithstanding their gravity.

14. On the issue of flight risk, he submitted that bare assertions from the bar are insufficient. The 1st accused had voluntarily surrendered himself to the Directorate of Criminal Investigations, which shows commitment to due process. Counsel urged that conditions can be imposed to secure attendance, and prayed that the Court be guided by Article 49(1)(h).

15. Mr. Kinyanjui, appearing for the 2nd accused, challenged the reliance on public interest as a ground to oppose bail. He described public interest as an unruly horse, inherently vague and open to manipulation. While acknowledging its legal recognition, he argued that it lacks clear definition and shifts with societal values, making it unsuitable as a basis for denying a constitutional right. In his view, reliance on such a fluid concept erodes the presumption of innocence and undermines liberty.

16. Mr. Ombeta further submitted that the accused persons had fully cooperated with investigative bodies, including IPOA, and that no credible evidence of interference with witnesses had been presented. Citing Republic v Dwight Sagaray & 4 others [2013] KEHC 3824 (KLR), he argued that actual evidence, not speculation, is required to establish interference. Mr. Omari, for other accused persons, reinforced that no compelling reasons had been demonstrated as required. He challenged the claims of threats to the victims' family, noting the absence of proof linking the accused to such acts. He stressed that the accused have been interdicted and no longer wield official influence.

17. Mr. Chisengo and Mr. Wandago, also for the 2nd accused, submitted that their client is a police constable without influence and has not been linked to tampering with evidence. They relied onRepublic v Ali & 2 others [2024] KEHC 14381 (KLR), where it was held that the seriousness of an offence, on its own, does not constitute a compelling reason. They further citedRepublic v Zacharia Okoth Obado & 2 others [2018] KEHC 3053 (KLR), where the Court held that the burden rests on the prosecution to demonstrate compelling reasons, andRepublic v Gerald Mutuku Nyalita & another [2015] KEHC 1029 (KLR), which stressed that interference must be established by evidence, not conjecture.

18. Mr. Nyabuto, for the 3rd accused, similarly argued that no tangible evidence had been produced to support allegations of interference or public hostility. He maintained that the prosecution had failed to show that his client posed any risk to the trial process, and that the gravity of the charge cannot by itself displace a constitutional right.

19. Mr. Black Omango, for the 4th accused, denied that his client was a leader among detainees, dismissing the reference to "Kinara" as misleading. He argued that leadership is not presumed but must be proved, and no evidence of communication or threats had been shown.

20. Mr. Nuongo, appearing for the 5th and 6th accused, submitted that the primary consideration in bail is whether the accused will attend trial. He contended that the prosecution had failed to establish sufficient grounds to deny bail, and stressed that the two accused are young men with families depending on them.

21. Ms. Sophia Nekesa added that the accused have fixed abodes and that less restrictive conditions, short of detention, are available to secure their attendance.

22. Mr. Owiti, however, raised concern that as police officers, the 1st, 3rd, and 4th accused may be shielded by the "blue code of silence," an unwritten culture discouraging officers from incriminating colleagues. He submitted that this possibility ought to be considered in balancing the competing interests.

23. Finally, Mr. Makori submitted on the need to balance constitutional rights. He submitted that in resolving competing rights, the party seeking to elevate one right over another bears the onus of justifying that precedence. He contended that such justification has not been provided by the prosecution.

24. The Court called for pre-bail reports filed in respect of the six accused persons.

25. For the first accused, the family of the deceased narrated profound anguish. The father stated that the death of their only child had subjected them to severe psychological torture, ulcers, insomnia and irreparable socio-economic loss. Having witnessed the arrest, they had expected lawful arraignment, only to learn of his death in police custody. The mother, in her grief, declined to give substantive views, weeping and stating that no bail decision could restore her son. The widow lamented that the deceased had supported her education and that his death had left her and their three-year-old child in despair and vulnerability.

26. The family was categorical in opposing bond, citing the accused's training and connections, the risk of interference with witnesses, and the danger of reprisals. They feared he might abscond or act through proxies. They also raised concern about the reinstatement of a senior officer in the case, which they viewed as a further threat. By contrast, the community described him as a respected police officer, church elder, and contributor to local development, vouching for his release.

27. In respect of the second accused, the victim's mother was observed to be in constant grief while other family members were at risk of mental breakdowns. They reported ulcers, insomnia, hypervigilance, and fear that they too might be targeted. They complained of cyber-bullying and unwanted publicity. The family opposed bond, citing the accused's influence as a police officer and expressing mistrust in the National Police Service. They feared that release could trigger fresh demonstrations. The community, however, vouched for him as a devout Christian and positive role model. Investigating agencies opposed his release, noting that as Day Cell Sentry Officer he had direct access to holding cells and his release would jeopardise investigations.

28. The third accused faced similar opposition. The family raised concerns of retaliation, interference, flight risk and public disorder. They feared his release would spark renewed unrest and requested strict restraining orders if bail were granted. Community members, however, described him as humble, religious and of good standing, pledging to ensure compliance with any terms imposed.

29. The fourth accused's report revealed continued grief from the victim's family, who cited interference risks, reprisals, trauma and the erosion of faith in the justice system. Community assessments were divided. Administrators described him as well-behaved and did not oppose release, while fellow officers found him cooperative but requiring supervision.

30. For the fifth accused, secondary victims comprising family and community members opposed bond, citing interference, reprisals and insecurity. They feared that release would embolden others to target them. By contrast, neighbours and administrators described him as responsible and well-regarded. Friends portrayed him as a mentor. Investigating officers opposed bond.

31. The sixth accused was similarly opposed by the victim's family, who cited trauma, safety fears, and the likelihood of absconding. They linked his potential release to the risk of renewed national demonstrations. The community did not strongly oppose release, describing him as posing no public threat. The investigating officer and prosecution, however, remained opposed.

32. It is upon this Court to weigh these competing interests against the constitutional standard that bail may only be denied where compelling reasons exist.

33. Having considered the application, the responses, the arguments for and against the grant of bail, the issues for determination are:

    a. Whether the prosecution has established sufficient compelling reasons to warrant limiting the accused persons' constitutional right to bail.

    b. Whether, in light of the findings under (a), the accused persons should be granted bail pending trial.

    (a) Whether the prosecution has established sufficient compelling reasons to warrant limiting the accused persons' right to bail

34. Article 49(1)(h) of the *Constitution* provides 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 not to be released." Section 123A of the Criminal Procedure Code (Cap. 75, Laws of Kenya) codifies the statutory framework for determining such compelling reasons. It provides thus:

> " In such a determination the courts are to factor the following exceptions to limit the right to bail;
>
> a. Nature or seriousness of the offence;
>
> b. The character, antecedents, associations, and community of the accused person;
>
> c. The defendants record in respect of the fulfillment of obligations under previous grant of bail;
>
> d. The strength of the evidence of his having committed the offence:
>
> (2) 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 if released on bail, it is likely that he would fail to surrender to custody;
>
> b. Should be kept in custody for his own good.

35. Further, in the case of R v Pascal Ochieng Lawrence [2014] eKLR, the Court outlined key considerations in the determination of an application for bail pending trial as follows:

> " It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the state. The court, in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:
>
> -The seriousness of the offence although this carried greater weight under the old constitutional dispensation.
>
> -Weight of the evidence so far adduced if the case is partly heard.
>
> -Possibility of the accused interfering with witnesses.
>
> -Safety and protection of the accused once he is released on bail/bond.
>
> -Whether the accused will turn up for trial.
>
> -Whether the release of accused will jeopardize the security of the community."

36. The Bail and Bond Policy Guidelines further direct that the prosecution must satisfy the Court, on a balance of probabilities, of the existence of compelling reasons. Such reasons include the likelihood of absconding, interference with witnesses, danger to victims or the public, endangerment of national security, or the public interest in pre-trial detention.

Seriousness of the Charge.

37. The prosecution argued that the charge of murder, carrying the death penalty upon conviction, creates a strong incentive for the accused persons to abscond if released. The accused persons face allegations of killing a blogger Albert Ojwang within the precincts of Central Police Station. The severity of the offence, coupled with the profile of the deceased, makes the risk of absconding a realistic and significant concern. The court must also acknowledge that the potential penalty for murder, being death, heightens the incentive for an accused person to abscond if released on bail.

38. While the right to bail is a constitutional guarantee under Article 49(1)(h) of the *Constitution*, it is not absolute. The Court is obligated to consider the nature of the offence and its attendant circumstances.

39. The Supreme Court of Malawi, in the case of John Zenus Ungapake Tembo & 2 Others v The Director of Public Prosecutions, M.S.C.A. CR. Appeal No. 16 of 1995, the court discussed the consideration of whether an accused person may be tempted to avoid trial once bond is granted, and observed thus:

> " Fear is a natural instinct in human beings, so that generally speaking, the more serious the Offence, a capital offence, for example, and the sentence it may call for upon conviction, the greater the likelihood that the Accused person would be disposed to abscond."

40. Ochieng, J (as he then was) in Republic vs. Ahmed Mohammed Omar & 6 Others [2010] eKLR expressed himself as hereunder:

> " Meanwhile, before the High Court of Kenya, at Nakuru, my Learned Brother Emukule J., has also had occasion to grapple with an application for bail pending trial. He did so in

Republic vs Dorine Aoko Mbogo & Another, Criminal Case No. 36 of 2010; His Lordship expressed the view that;

> " Murder, (like) treason, robbery with violence or attempted robbery with violence are offences which are not only punishable by death, but are by reason of their gravity, (taking away another person's life, disloyalty to the state of one's nationality, or grievous assault or injury to another person or his property), are offences which are by their reprehensiveness, not condoned by society in general. It would thus hurt not merely society's sense of fairness and justice, and more so, the kith and kin of the victim, to see a perpetrator of murder, treason or violent robbery (committed or attempted) walk the street on bond or bail pending his trial. charge of murder, treason, robbery with violence (committed or attempted) would thus be a compelling reason for not granting an accused person bond or bail.'

Notwithstanding those remarks, the learned judge went ahead to grant bail in that case. I therefore believe that the judge did not, and could not have meant that once an accused person is charged with an offence punishable by death, that is reason enough to deny him bond or bail pending trial."

41. Whereas the ground advanced by the State is an important one, it cannot however be considered in isolation, unless there are grounds to show or demonstrate that the accused persons may be inclined to evade trial in order to escape punishment since the *Constitution* guarantees the enjoyment of bail by all accused persons, notwithstanding the offence and the punishment they may face if convicted. That right cannot be curtailed without good cause.

Interference with witnesses

42. The prosecution urged that the 1st, 2nd and 3rd accused persons, being police officers stationed at Central Police Station at the material time, held positions of authority and influence. Key witnesses in this matter are drawn from the same station where the accused previously served before their arraignment. It was further alleged that the 4th accused assumed a leadership role during his detention and maintained close connections with the first three accused and other detainees, circumstances that heighten the risk of interference with witnesses.

43. Supporting these submissions, Mr. Juma, appearing for the victims, contended that the first four accused persons occupy a higher pedestal than ordinary citizens, being officers of the law who understand the consequences of breaching it and who wield power and authority. This, it was argued, increases the likelihood of witness interference. The deceased's father also expressed his fear since the killing of his child, noting that the case has attracted public attention and that his home is well known, causing him constant anxiety.

44. The 1st, 2nd, and 3rd accused, however, denied any intention or ability to interfere with witnesses. They pointed out that they had already been interdicted and no longer held any authority over other officers. Likewise, the 4th, 5th, and 6th accused disputed the allegations, asserting that no evidence existed to suggest they posed a risk of interfering with witnesses.

45. The legal standard on this issue has been addressed in several decisions. Lesiit, J (as she then was) in the case of Republic vs Richard David Alden [2016] eKLR. while admitting the accused to bail in that

case, cited other cases on the issue on the interference of witnesses and stated amongst other things as follows:

> "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....."

46. The Court in Republic v Dwight Sagaray & 4 others [2013] KEHC 3824 (KLR) established the threshold to determine the veracity of this ground 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."

47. In Republic v Zacharia Okoth Obado & 2 Others [2018] eKLR, the Court emphasised that the possibility of interference cannot be treated lightly, particularly where the accused have access to witness statements and the identities of adverse witnesses. The Court found that the mere release of an accused person may itself instil fear and anxiety in witnesses, thereby amounting to indirect intimidation. The Judge noted, however, that safeguards such as barring the accused from entering certain jurisdictions could be considered to mitigate the risk.

48. The authorities cited draw attention to two primary concerns when allegations of witness interference are raised. First, is the protection of victims and witnesses, whose rights are guaranteed by both statute and the *Constitution*. Section 10 of the *Victim Protection Act*, No. 17 of 2014, expressly obliges the Court to ensure that victims are accorded protection throughout the trial process. Second, is the protection of the integrity of the criminal trial itself, which is endangered where witnesses are compromised or intimidated.

49. The second limb, therefore, concerns the preservation of the trial process. Any interference with witnesses undermines the administration of justice, prejudices the fairness of the proceedings, and erodes public confidence in the criminal justice system. In this regard, I find persuasive the reasoning of Lesiit J in Republic v Fredrick Ole Leliman & 4 Others, Nairobi Criminal Case No. 57 of 2016 (2016) eKLR, where she observed:

> "Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger an individual or the public at large; likelihood the accused may commit other offences. In this instance where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail term; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention."

50. The Court observes that the 1st, 2nd, and 3rd accused persons are police officers who, despite their interdiction, still wield authority and influence through their training, service connections, and

standing in the community. This concern was consistently raised by the deceased's family and is supported by the prosecution.

51. The law requires proof of interference in the sense of influencing, compromising, inducing, or intimidating a witness so as to affect his or her testimony. Such interference is not confined to any particular stage of proceedings; it may occur immediately after the offence, during investigations, once charges are preferred, or even in the course of trial. It may be perpetrated by an accused directly, by witnesses, or through third parties. Its forms are diverse, but the test for the Court is whether the conduct is aimed at impeding or perverting the course of justice. Where such risk is established, it constitutes a compelling reason to restrict the liberty of the accused.

52. In the present case, I am persuaded that the fear expressed is not speculative but real. The accused persons' positions as police officers, with residual authority and access to networks within the service, present a genuine and imminent risk of interference with key witnesses specifically those from the National Police Service and civilian witnesses. In the circumstances, I am inclined to agree with the prosecution and find that the apprehension of witness interference is well-founded. I therefore, hold that this constitutes a compelling reason against the grant of bail to the 1st, 2nd, and 3rd accused persons.

Interference with Investigation.

53. On the issue of interference with investigations, the prosecution alleged that the accused persons tampered with CCTV footage. Interference with investigations, if proved, is a compelling reason to limit the right to bail, as it directly undermines the collection and preservation of evidence. Such conduct goes to the very heart of the criminal process, as it undermines the ability of investigators to gather, preserve, and present reliable evidence. It also threatens the integrity of the trial by creating gaps or distortions in the evidentiary record upon which justice must ultimately be based.

54. The Court must, however, be guided by proof rather than speculation. It is incumbent upon the prosecution to provide credible evidence linking the accused to the alleged tampering, whether by expert reports, witness testimony, or forensic analysis. In the absence of such evidence, the Court cannot rely on bare allegations.

55. It is also important to distinguish between acts committed prior to arrest and those that may be committed if the accused were to be released on bail/bond. If the prosecution contends that the accused have already tampered with evidence, then clear proof of that act must be placed before the Court. If, on the other hand, the prosecution asserts a likelihood of future interference, then it must lay a factual basis to demonstrate that release on bail would create a real and present risk of further obstruction of investigations. In both instances, the evidential threshold must be met.

56. In the present case, no material was tendered to demonstrate that the accused persons were either jointly or personally involved in tampering with the CCTV footage. Equally, there was no evidence tendered by the prosecution to show that the release of the accused would expose the investigation to further risk of interference. I accordingly find that, the allegations remain conjectural and cannot be used as a ground to curtail the accused persons' constitutional rights.

Public Interest.

57. The prosecution also submitted that the release of the accused persons from custody would be fatal to public safety. The court is obliged to consider public interest and safety when determining whether to grant bail. This principle is firmly grounded in both the *Constitution* and the Bail and Bond Policy

Guidelines, which recognise that the right to bail is not absolute and may be limited where its exercise would undermine public confidence in the administration of justice or jeopardise public safety.

58. The Court is urged to consider the broader consequences of the offence and the prevailing circumstances following the death of the deceased. The record reflects that the incident in question did not only result in the tragic loss of life but also ignited widespread public outrage across the country. Protests and demonstrations were reported in several towns, during which millions of shillings' worth of property was destroyed. There was also significant disruption to social and economic life, accompanied by heightened tensions between the public and law enforcement agencies. The unrest was not confined to one locality but assumed a national character, underscoring the gravity with which the matter is perceived by society at large.

59. Public interest is a recognised consideration in bail jurisprudence. While the constitutional presumption is that an accused person shall be released on reasonable bond or bail terms pending trial, Article 24 of the *Constitution* permits the limitation of rights where such limitation is reasonable and justifiable in an open and democratic society. The courts have consistently held that in certain cases, public order and the preservation of peace may amount to compelling reasons to restrict liberty. The balancing exercise must therefore weigh the individual right to bail against the collective interest of society in maintaining order, security, and confidence in the administration of justice.

60. InRepublic vs Muneer Harron Ismail & 4 Others [2010] KEHC 4096 (KLR), Warsame J (as he then was) affirmed that public order and security are legitimate considerations in bail applications. The court stated that:

> "In my humble opinion the issue of national security and interest is a fundamental issue which requires extreme caution and dedication. The issue of national interest is a paramount factor which can heavily weigh in the mind of any judicial officer who is confronted with sufficient evidence. The issue of national security and interest is not a casual business, its magnitude, seriousness, its gravity and implication must be brought to the attention of the court in order to make an informed and fair decision. In making allegations on matters concerning national security, the prosecution must be possessed of or have information which is definite and which clearly shows that there is a foreseeable risk to the interest of the public...."

61. Paragraph 4.9 of the Bail and Bond Policy Guidelines expressly recognises public order, peace, and security as relevant considerations in bail decisions. At paragraph 61, it is further observed that public confidence in the criminal justice process is critical, and that courts should not shut their eyes to the broader societal impact of releasing an accused where such release may aggravate public tension or erode trust in judicial processes.

62. In the present case, the unrest that followed the death of the deceased cannot be dismissed as a passing incident. The widespread protests, the destruction of property including the burning of Mawego police station, and the climate of fear generated are indicative of the heightened sensitivity surrounding the matter. The accused persons stand charged with offences arising from circumstances that have already inflamed public sentiment. Their release on bail at this stage would risk aggravating public tension, with the potential for renewed unrest, thereby undermining both public safety and the administration of justice.

63. It is well recognised that such interest is not static but may wane or change with time. At this juncture, however, the matter is still fresh in the public mind. It would not be in the interest of justice to release the accused persons when the case continues to evoke strong sentiments across the country.

64. It is not lost on this Court that bail conditions may sometimes be tailored to mitigate risks. However, in the peculiar circumstances of this case, no set of conditions would sufficiently allay the risk of renewed instability or the perception that justice is being compromised. Public interest demands that the accused remain in custody while awaiting trial, so as to safeguard public order, reassure victims and their families, and preserve confidence in the justice system.

65. Accordingly, I find that the scale of public unrest and destruction following the deceased's death constitutes a compelling reason, within the meaning of Article 49(1)(h) of the *Constitution*, to deny bail to all six accused persons. In addition, the demonstrated risk of witness interference provides a further compelling reason against the 1st, 2nd, and 3rd accused. The application for bail is therefore declined at this stage. Parties are at liberty to make a fresh application for bail/bond once key civilian witnesses and police officers from central police station have testified.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Mr. Makori, Mr. Owiti, Ms. Timoi & Ms Gichui for the State

Mr. Omari, Mr. Kinyanjui, Mr. Kangai, Mr. Wambui for 1st accused

Mr. Mwale, Mr. Chisengo and Mr. Mandago for the 2nd accused

Mr. Kamau for 3rd accused

Mr. Omenga for 4th accused

Mr. Ng'weno for 5th and 6th accused

Ms. Wanjiru for IPOA.