



**Republic v Ougo & another (Criminal Case E045 of 2024)  
[2025] KEHC 13397 (KLR) (Crim) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13397 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E045 OF 2024  
AM MUTETI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**COLLINS OKOTH OUGO ALIAS GATUSO ..... 1<sup>ST</sup> ACCUSED**

**SYLVIA AOKO ODHIAMBO ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons are jointly charged with the offence of murder contrary to Section 203 and 204 of the Penal Code.
2. The two are alleged to have murdered one Scovian Maya a child of tender years .
3. by way of Notices of Motion dated 26<sup>th</sup> July 2024 and 27<sup>th</sup> November 2024 respectively the two accused persons have moved this court to be released on bail pending further hearing of the case.
4. The prosecution has so far called 3 witnesses including the mother of the deceased child.
5. Mr. Omenge and Mr.Nguono appearing for the 1<sup>st</sup> and 2<sup>nd</sup> accused argued that the right to bail under Article 49 (1) (h) of *the Constitution* should not be curtailed unless there are compelling reasons to deny bail.
6. Counsel argued that under Article 50 (2) (a) the two accused persons are presumed innocent until proven to be guilty thus notwithstanding the evidence so far tendered they should be admitted to bail pending trial.



7. Further, counsel submitted that although the prosecution have advanced the argument of the likelihood of the two accused persons interfering with witnesses, the claims are largely unsubstantiated and none of the witnesses who testified alluded to such an attempt.
8. The two accused persons are said to be Kenyans who are willing to abide by any conditions that the court may grant and that none of them has the intention to evade trial.
9. Ms Njoroge counsel for the state opposed the release of the two accused persons relying on an affidavit sworn by the Investigating Officer PC Gilbert Kiprotich. According to PC Kiprotich the two accused persons are a flight risk and that they have no known fixed abode. Further, Ms Njoroge argued that at the time of arrests the two accused persons were living in rental houses and that there is no guarantee and that they shall be traced should they be released on bail and fail to return for trial.
10. The two are also said not to be engaged in any formal employment thus the prosecution is apprehensive they are likely to disappear upon release. Ms Njoroge further argued that the 2<sup>nd</sup> accused at the time of her arrest she had moved houses a clear indication that she intended to evade arrest and prosecution.
11. Ms Njoroge however, argued that in the event the court is persuaded to grant bail then the court should impose stringent terms to ensure that the accused persons do not evade trial.
12. Mr. Omenge cited the case of Danson Mgunya Vs. Republic 2010 eKLR and argued that liberty is precious and should not be whimsically denied. In Republic Vs Joktan Mayende & 3 Others 2012 KEHC 551 [KLR] Justice Gikonyo dealing with the issue of interference of witnesses held:-

“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.”

13. In the instant case none of the witnesses who has testified alluded to any attempts by any of the accused or their proxies to interfere either by way of threats, intimidation or promise to dissuade them from giving evidence. Similarly, the prosecution did not place on record names of witnesses that are likely to be interfered or against whom attempts have been made to dissuade them from giving evidence. I agree with defense therefore that the ground of likelihood of interference with witnesses remains unsubstantiated and cannot therefore form the basis for denying the two accused persons bail.
14. The question that remains to be resolved by the court is whether the two accused persons are a flight risk as contended by the prosecution. The mere fact that a person is not engaged in any form of formal employment does not mean that such a person is unfit for release on bail or is necessarily by reason of their stature in society likely to be a flight risk. The prosecution succeed on this ground would require to present evidence pointing to calculated attempt by the accused person before their arrest to conceal their whereabouts or actual attempt to flee the jurisdiction of the court. Further, it does not follow as a matter of course that whenever a person changes their place of abode more so where that person is living in rented premises, that the motivation behind movement is to evade arrest.



15. In the end this court finds that the prosecution has not succeeded in establishing compelling reasons to have the two accused persons denied bail and therefore this court is minded to admit the two to bail on the following conditions:-
- a. That each of the accused persons shall be released on a bond of Kshs. 1 Million shillings plus one surety of similar amount.
  - b. Each of the accused shall deposit their travel documents i.e passports with the court
  - c. Both accused persons shall provide the contacts of two family members and copies of their national IDs
  - d. The two family members shall each appear before the Deputy Registrar and undertake on oath to produce the respective accused persons in court as and when required.
  - e. The two accused persons are not to set foot at Lucky Summer, Sinai Area, within Baba Dogo, in Nairobi where the incident arose.
  - f. Each of the accused persons shall provide details of their fixed abode and obtain a letter from the local chief of the area where they shall be residing confirming that the place identified is indeed their fixed abode.
  - g. The accused persons shall not communicate with any of the remaining witnesses or in any manner seek to interfere with any of them.

16. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

Ms Njoroge for the state

Omeng for the 1<sup>st</sup> Accused

Oduor

Omeng holding brief for Kamau for 2<sup>nd</sup> Accused

Nguono watching brief for Deceased's family.

NAIROBI HC CRIMINAL CASE NO E 045 OF 2024 – Rep –VS- Collins Okoth Ougo Alias Gatuso & Ano.

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