



**Republic v Wainaina & another (Criminal Case E020 of 2025)
[2025] KEHC 13461 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL CASE E020 OF 2025
J WAKIAGA, J
SEPTEMBER 17, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHARLES WANDERI WAINAINA 1ST ACCUSED

HARUN NGINGI RUGURU ALIAS ARUNA 2ND ACCUSED

RULING

1. The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) the particulars of which were that on the 7th day of February 2025 at around 1730 hours at Kayole corner area within Kayole sub county jointly with others not before the court murdered Paul Muchemi Alias Maldini Alias Paulo.
2. They pleaded not guilty to the charges and in compliance with the provisions of Article 49 of the [Constitution](#), the prosecution through SGT Benjamin Mbilo swore an affidavit opposing the release of the accused persons on bond /bail in which it was deposed that the 1st accused on reported to the deceased cousin that he had lost his empor cycle and that he suspected that the deceased is the one who had carted the said motor bike away. He further confided to two other colleagues that someone at the dump site would mourn.
3. It was deposed further that on the same day at 17.30 hours , the 1st accused was spotted carrying a pillion passenger on a motor cycle while accompanied by other riders as they went out to search for the deceased who had been sported around Kambi Moto area where one of the prosecution witnesses saw a marauding group seriously assaulting the deceased with assorted weapons, whom they later escorted to Mugendi Police Station and reported that they were good Samaritans who had rescued the deceased from mob injustice who suspected him to had stolen a motor bike.



4. That when word went around that the deceased had died the accused vanished to unknown place and switched off his mobile phone until; he was arrested through intelligence report and was therefore a flight risk who can easily disappear without trace should he be released on bail.
5. It was contended further that the accused persons were likely to interfere with four prosecution witnesses who were well known to them as colleagues at the dump site.
6. In response to the said affidavit, the 1st accused filed a replying affidavit in which he deposed that he had a fixed abode at Kayole with deep rooted family, social and economic ties in the area and that when he lost his motor cycle , being a law abiding citizen , he reported the matter to the police to facilitate proper investigation and that when the deceased was spotted in possession of the said motorcycle by members of the community, they confronted him and subjected him to mob injustice, from which he intervened and rescued him and took him to the police station only from him be arrested .
7. He contended that no compelling reason had been advanced by the prosecution that he was likely to abscond and or interfere with witnesses and that he was willing to abide by all conditions that the court may impose.
8. The 2nd accused did not file a replying affidavit but filed written submissions.
9. In compliance with the Bond Bail Policy Guidelines =, the court called for pre-bail report in which for the 1st accused, it was stated that the same was residing with his family in Soweto River Bank where he operated as a motorcycle rider as well as working at the dump site with no previous criminal history. The local administration did not object to his release on bond
10. On the victim it was stated that the same was a casual labourer at the dump site and that there was no previous relationship between him and the accused persons.

Submissions

11. On behalf of the second accused person, it was submitted that bail was a constitutional as well statutory right of the accused person under Article 49(1) (h) as well as section 123A of the *Criminal Procedure Code* which must only be denied where there are compelling reasons. It was contended that the reasons advanced by the prosecution were far fetched and misleading and that as per Murima J in *Republic v Sifuna* [2023] KEHC22379 (KLR) the fact that the witnesses are related to the accused cannot be a measure of imputing interference.
12. It was submitted that the primary purpose of bail was to secure the accused persons attendance to court to answer the charge at the specified time as was stated in *Nganga v Republic* [1985] KLR 455.
13. It was submitted by Mr. Gare that the accused was arrested on 26th May 2025 while the offence is alleged to had occurred in the month of February.
14. On behalf of the prosecution, Ms Ogweno that there were eye witnesses whom the accused was likely to interfere with and that the accused was a flight risk having moved from his house and switched off his mobile phone.

Determination

15. Bond is a constitutional right of every accused person which can only be denied when there are adequate compelling reasons advanced by the prosecution to the satisfaction of court on a balance of probability.



16. What constitute compelling reasons was stated in the case of *Michael Juma Oyamo & another v Republic* [2019] KECA 9531(KLR) thus

23. 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 *Republic 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.”

24. 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.

25. 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.”



26. 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.”
17. In this matter the only issues raised is that the accused is a flight risk and might interfere with witnesses. The prosecution has whoever failed to demonstrate the nature of the said interference and or to provide any evidence that there has been any interference with any witness as was stated in the case *Republic v Dwight Sagaray & 4 others* (2013) eKLR.
18. On the allegation of the accused being a flight risk, the first accused has given an account of his whereabouts during the period the prosecution alleges he had gone under and further states how this motor vehicle was allegedly stolen by the deceased and the state. He took including reporting to the police and I am satisfied with that account as probable.
19. I am therefore not satisfied that the prosecution has failed to advance compelling reasons and that those advanced can be adequately mitigated by appropriate bond terms. It would therefore be a violation of the accused constitutional right should they be denied bond on the grounds advanced by the prosecution.
20. The accused persons shall therefore be admitted to bail bond on the following terms and conditions:
- A. Bond of Kenya shillings five hundred thousand (kshs 500,000) with one surety of similar amount in respect of each of the accused persons
 - B. In the alternative cash bail of Kenya shillings two hundred and fifty thousand (Kshs. 250,000/=) with one known contact approved by the court in respect of each of the accused persons.
 - C. The accused persons shall make no contact with any of the intended prosecution witnesses during the period of trial unless the same is done in the presence of the Investigating officer.

DATED SIGNED AND DELIVERED THIS 17th DAY OF SEPTEMBER 2025

J. WAKIAGA

JUDGE

In the presence of: -

Court assistant – Irene

Ms. Ongweno for the state

Mr. Musili for the 1st accused.

Mr. Gare for the 2nd accused.

