

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL CASE NO. E006 OF 2025**

ISAAC KURIA alias KUSH.....4<sup>TH</sup>  
APPLICANT/ACCUSED

ALLAN OMONDI OGOLA.....5<sup>TH</sup>  
APPLICANT/ACCUSED

VERSUS

REPUBLIC.....  
....PROSECUTOR

**RULING.**

1. At the outset, it is pertinent to observe that this Court delivered a ruling on bail on 14<sup>th</sup> August 2025 in respect of the 1st, 2nd and 3rd accused persons. The present ruling concerns the 4th and 5th accused persons
2. The accused persons are jointly facing a charge of murder contrary to section 203 as read with 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 30<sup>th</sup> April 2025 at about 7:45pm at the City Mortuary Roundabout along Ngong Road in Kilimani Sub-county within Nairobi County, the applicants jointly with others not before this Court murdered Charles Ong'ondo Were.
3. They pleaded not guilty. They have now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
4. IP Oliver Nabonwe the investigating officer, filed an affidavit dated 17<sup>th</sup> June 2025 opposing the release of the accused persons on bail. He averred that the gravity of the offence constituted a

compelling reason under the Bail and Bond Policy Guidelines to justify the denial of bail. He further stated that each accused person was a flight risk, given the possibility of a death sentence upon conviction. In addition, that after the commission of the offence, the 5<sup>th</sup> accused fled to Isibania where he was arrested while waiting to flee to Tanzania. He averred that there existed a likelihood of interference with witnesses, noting that the witnesses were closely connected to the accused persons. Finally, he argued in the interest of public safety and security the application for bail be declined.

5. The pre-bail report for the 4<sup>th</sup> accused, indicated that the victims, being the widows and children of the late Hon. Charles Ong'ondo Were, strongly opposed his release on bail. They described the deceased as the financial and emotional pillar of the family and Constituency, and stated that his death left them in fear, distress and economic hardship. They expressed concern that release of the accused might destabilise the fragile peace in Kasipul and re-ignite community tension.
6. While colleagues and neighbours described the 4<sup>th</sup> accused as diligent and peaceful, local security personnel linked him to a criminal gang. The investigating officer and the prosecution opposed bail on grounds that he posed a security threat, was a flight risk and might interfere with witnesses.
7. The 4<sup>th</sup> accused, married with three children, denied the allegations and offered family land as surety. His relatives undertook to guarantee his compliance and vouched for his good character.

8. The pre-bail report for the 5<sup>th</sup> accused indicated the victims, being the widows and children of the deceased, were opposed to his release on bail. They reiterated that the deceased was their sole breadwinner and the pillar of their family and Constituency. His death had left them in deep emotional, social and financial distress. They expressed continuing fears for their safety and that of the community, and warned that release of the accused may rekindle hostility, unrest, and renewed insecurity in Kasipul.
9. Although some community members and colleagues described the accused as disciplined and of good character, the investigating officer and prosecution opposed bail, citing likelihood of interference with witnesses, risks to public order, and threats to the accused's own safety given prevailing hostility.
10. The 5<sup>th</sup> accused, a family man with dependants, prayed for favourable bond terms and proposed sureties from relatives willing to guarantee his compliance.
11. As at the time of writing this ruling, neither the Prosecution nor the accused persons had complied with the Court's directions to file written submissions. The Court shall accordingly proceed on the basis of the averments on record. 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**

12. 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.**

13. 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.”*

14. 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.**

15. 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 sitting Member of Parliament in a calculated and brutal manner. The severity of the offence, coupled with the political 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.

16. While the right to bail is a constitutional guarantee under Article 49(1)(h) of the Constitution, it is not absolute. The Court is enjoined to consider the nature of the offence and its attendant circumstances. In the case of **Republic v Ahmed Mohammed Omar & 6 Others 2010 eKLR**, Ochieng, J. stated that:

*"... whereas the applicant is still presumed innocent; if he were to be convicted for murder, there is a possibility that the trial court could sentence him to death. To my mind, therefore, the severity of the sentence remains a significant factor for consideration in an application for bail pending trial."*

17. In a ruling from 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."*

18. 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**

19. The second ground advanced is the likelihood of interference with witnesses. The prosecution contends that the principal witnesses are relatives and close acquaintances of the accused persons. It is alleged that these witnesses have expressed apprehension for their safety and are presently under the protection of the Witness Protection Agency. Such placement is itself indicative of the seriousness of the threat perceived.

20. The court must examine these allegations not in isolation but in light of the surrounding circumstances. The accused and the witnesses share familial and social ties, creating both opportunity and means for interference. The gravity of the charge, coupled with the relationship between the parties, increases the likelihood

of such interference, particularly where the evidence suggests an organised and coordinated offence.

21. 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.”*

22. Similarly, this position was upheld in the case of **Republic v Joktan Mayende & 3 others [2012] KEHC 5551 (KLR)**, where the Court opined thus;

*“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."*

23. From the cited authorities, it is evident that intimidation or influence can be exerted directly or indirectly, and proximity to witnesses heightens this risk.

24. Given the protective measures already undertaken, the proximity of the accused to key witnesses, and the vulnerability of those witnesses, the risk is not speculative but real. In these circumstances, and guided by the above authorities, the court is satisfied that the likelihood of interference with witnesses is a compelling reason to deny bail. The court is persuaded that the risk to witnesses is both immediate and credible, and that no conditions of bail could adequately neutralise it.

**Public Interest.**

25. The prosecution also submitted that the release of the accused persons from custody would be fatal to public safety. The court is enjoined 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.

26. This position was aptly expounded by the Constitutional Court of South **Africa in S v Dlamini (CCT 21/98):**

*"It would be irresponsible to ignore the harsh reality of the society in which the Constitution is to operate. Crime is a serious national concern, and a worrying feature for some*

*time has been public eruptions of violence related to court proceedings... The ugly fact remains, however, that public peace and security are at times endangered by the release of persons charged with offences that incite public outrage.”*

27. The Court is also alive to the prevailing socio-political context. The deceased, a sitting Member of Parliament, held considerable influence and enjoyed a significant public following. His killing has attracted intense national attention. Releasing the accused at this stage would likely provoke public outrage and diminish public trust in the justice system. As held in **Republic v Rotich & 2 others [2024] KEHC 748 (KLR)**, courts must balance the accused’s constitutional right to liberty against the overriding duty to uphold the integrity of the trial process.
28. Balancing the constitutional rights of the accused with the need to safeguard public interest and safety, this court is satisfied that in the circumstances of this case, the preservation of public order, the protection of the community, and the upholding of confidence in the justice system outweigh the grant of bail at this stage.
29. The court must weigh the constitutional presumption of innocence and the right to liberty against the need to secure the attendance of the accused at trial and protect the administration of justice. Allegations of threats to witnesses, particularly those currently under witness protection, cannot be taken lightly. In this instance, the nature of the allegations, the vulnerability of the protected witnesses, and the risk posed to the integrity of the trial constitute compelling reasons within the meaning of Article 49(1) (h).

30. Taking into account the totality of the circumstances, this Court is satisfied that there exist compelling reasons to deny bail under Article 49(1)(h) of the Constitution.

31. Accordingly, the application for bail is hereby declined  
Orders accordingly.

**Ruling dated and delivered virtually this 2<sup>nd</sup> day of October  
2025**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**

Ms. Timoi for the Prosecution

Ms. Hamisi for the 4<sup>th</sup> Accused

Mr. Chacha for the 5<sup>th</sup> Accused

Mr. Mboya for the Victims.

Ms. Karimi Court Assistant.