



**Republic v Muthamia (Criminal Case E018 of 2024)
[2025] KEHC 14534 (KLR) (Crim) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E018 OF 2024
MW MUIGAI, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALEX BUNDI MUTHAMIA ACCUSED

RULING

Information

1. The Accused Person Alex Bundi Muthamia, was charged with murder of Jackson Kasee Mulaya on the night of 24th and 25th January, 2024 at Kyangombe area in Embakasi Sub-County within Nairobi County jointly with others.

Certificate Of Urgency

2. Nyera Sheron, Advocate for the Accused Person filed , Certificate of Urgency dated 23rd October, 2024 seeking the following orders:
 1. That the Court to review the terms of a Ruling, dated August 14, 2024, before Hon. Lady Justice Lilian Mutende denying the accused bail, which was ordered to be reapplied after the lapse of two months.
 2. That it has been two months since the Ruling, and the Court to allow the accused person to be released on reasonable term.



Application

3. On 23rd October, 2024 Nyera Sheron, Advocate for the Accused Person filed a Notice of Motion seeking the following order.
 1. That the accused herein, Alex Bundi Muthamia be admitted to bond/bail on such reasonable terms as the Court may determine pending the hearing and determination of this case.

Grounds For Orders

4. That The accused before his arrest lived with his family of three in Pipeline where he also worked as a broker for construction materials, being the sole breadwinner after his arrest he lost his residential home and the family moved to Muranga because the wife was unable to pay rent. However, the accused has relatives within Nairobi who are willing to accommodate him until the determination of this matter.
5. That the accused is innocent and is presumed innocent until the contrary is proved, which right cannot be qualified.

Affidavit By Alex Bundi Muthamia

6. On 23rd October, 2024 Alex Bundi Muthamia file a Supporting Affidavit and stated as follows:
 1. That the offence of murder is bailable.
 2. That he was denied bail on the allegation that he had no place of abode, and a flight risk. He was to reapply for bail after 2 months. The ruling was delivered on August 14, 2024, and since then, two months have lapsed.
 3. Before his arrest he lived with his family in Pipeline where he worked as a broker for construction materials, being the sole breadwinner after his arrest he lost his home, and his family moved to Muranga because his wife was unable to pay rent. However, he has relatives within Nairobi who are willing to accommodate him until the determination of this matter.
7. He has cooperated and will continue to cooperate with the police throughout the investigations and the trial, he provided all the information regarding his rural home and all required Information within his knowledge involving the case including disclosing the residence of the other two accused persons.
8. He was advised by his advocate that he is entitled to be released on bail/bond on reasonable terms as it is his constitutional right
9. He is advised by his advocate that he is presumed innocent until the contrary is proved, which right cannot be qualified.
10. He is not a flight risk and he shall attend court at all times until the conclusion of the matter and abide by all terms and conditions set by the Court.
11. He shall not threaten or interfere with witnesses or any investigations in any manner whatsoever.

Replying Affidavit By Prosecution

12. On 19th June 2024 NO95009. PC Toodd Achola of DCI Embakasi Nairobi filed a Replying Affidavit and stated as follows:



1. That contents of paragraph 2.3 & 4 are denied in toto. This is because our preliminary investigation revealed that the accused neither has a verifiable source of income nor a family of his own.
2. That the accused was staying in a rental house within Pipeline area and that the said house was repossessed by the landlord upon learning that the accused had been arrested and detained at Embakasi Police Station awaiting arraignment at the High Court.
3. That in response to paragraph 5, the accused does not have a fixed place of abode in Nairobi or anywhere within the Republic of Kenya, we are therefore apprehensive that he is likely to be a flight risk.

Probation Officer's Report

13. On 15th July, 2024, Probation Officer Abima Mary M. filed a Bail Information Report as follows:

Victims Concerns

14. The views of the victims were obtained from the primary victim's maternal uncles. The primary victim hereon referred to as the deceased was 19 years of age at the time of his demise. He was born into a single parent household, is the first born in a family of two siblings. His only parent is deceased and together with his 16 year old brother were raised by their maternal grand-parents. He has been described to have been industrious and polite. He had gone up to Standard Eight and was a bodaboda rider at the time he met his death. He assisted in providing for his aged grandparents and younger sibling.
15. The family was heartbroken by the sudden demise of the deceased. The grandparent's health was adversely affected resulting to high blood pressure due stress related to the death. The family has not received any threats pertaining this matter adding that the accused is unknown to them and the scene of crime is far from their place of abode in Githuai.
16. The victims pray for justice, expressed their reservations to the accused's bond/bail application as in their eyes justice would not be seen in the event bond/bail is granted.

Conclusion

17. The accused is a family man with a wife and children that solely depended on him prior to his arrest and subsequent incarceration. He acknowledges the seriousness of the offence and the attendant sentence if found guilty. He prays to be admitted to reasonable bond/bail terms and will endeavor to attend the trial to its logical conclusion and abide by any additional court orders. The accused's family has no property under its name, that notwithstanding, have shown willingness to mobilize resources and post sureties in the event he bond/bail is granted. The victims described the death of their kin to be devastating.
18. The loss has taken a toll on the family financially and emotionally. While acknowledging the accused's constitutional right to bond/bail, they are opposed to this bond/bail application. They pray for justice and in their eyes, it will not be seen to take course if bond/bail is granted. His probable place of abode in the event bond/bail is granted could not be established going by information gathered from the family and the community.



Analysis & Determination

19. This Court considered the application for bail and bond the Prosecution grounds in opposing grant of bail and bond, submissions by both Applicant and Prosecution and Pre -bail Report; the question to be answered is whether to grant or not grant bail or bond to the Applicant.

The Law On Bail And Bond

20. Article 49(1)(h) of *the Constitution* provides that:-

An accused person has the right....

- (h) To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

21. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P. 25 -4.26 which sets out judicial policy on bail/bond thus:-

“The following procedures should apply to the bail hearing:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-
- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- f. That the accused person is likely to interfere with witnesses or evidence; or
- g. That the accused person is likely to endanger national security; or
- h. That it is in the public interest to detain the accused person in custody.”

22. In Republic vs Fredrick Ole Leliman & 4 Others [2016]eKLR the Court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of Ng'ang'a vs Republic 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

The accused will fail to turn up at his trial or to surrender to custody;

- b. The accused may commit further offences; or



- c. He or she will obstruct the course of justice
23. In *Republic v Oonde & another* (Criminal Case E018 of 2024) [2024] KEHC 9000 (KLR) (25 July 2024) (Ruling) Muchemi J observed that:
- “The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider; ”
- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
 - b. The strength of the prosecution case;
 - c. The character and antecedents of the accused;
 - d. The likelihood of the accused interfering with prosecution witnesses.”
24. In *Republic v Danson Mgunya & Another* [2010] eKLR described the right to bail as an “inalienable right” by holding that;
- “The result of the foregoing is that a murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”
25. *Republic v Sifuna* (Criminal Case E014 of 2023) [2023] KEHC 22379 (KLR) (22 September 2023) (Ruling) court held that:
- “Therefore, in granting bail or bond, the trial court is called upon to exercise its discretion and, if there are no compelling reasons to deny an accused bail or bond, the trial court should exercise its discretion in favour of the accused.”
26. *Republic v Sifuna* (Criminal Case E014 of 2023) [supra], Mrima J opined that:
- Given the amorphous nature of the term ‘compelling reasons’ or ‘exceptional circumstances’, a Court while exercising its discretion in dealing with a bail and bond application must ‘consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify his or her release’ and must also balance “between the liberty interests of the accused and the interests of which”, society in denying the accused bail, will be resolved in favour of the denial of bail, unless “exceptional circumstance” are shown....”. In Kenya those ‘compelling reasons’ or ‘exceptional circumstances’ must be demonstrated by the prosecution.
27. The Accused person’s right to bail and bond is outlined by Article 49 & 50 Constitution but subject to compelling reasons by the Prosecution.
28. The Prosecution ODPP has the burden of proving that there are compelling reasons to deny release on bail/bond. To deny bail/bond the Prosecution ODPP must provide cogent evidence and not mere allegations, the claim ought to be substantiated. Compelling reasons may include failure to attend court Commit or abet commission of a serious offence; seriousness of the offence or endanger the safety



of victims, individuals or the public or interfere with witnesses or evidence. preliminary investigation revealed that the accused neither has a verifiable source of income nor a family of his own.

29. The I/O deposed that the accused was staying in a rental house within Pipeline area and that the said house was repossessed by the landlord. The accused does not have a fixed place of abode in Nairobi or anywhere within the Republic of Kenya, we are therefore apprehensive that he is likely to be a flight risk.
30. The Ruling on Bail & Bond of 6/8/2024 by Hon LJ L Mutende was that the Application to grant Bail & Bond was withheld to allow Prosecution and /or Investigators Complete investigations by arresting 2 other suspects accomplices as if he is released he will scuttle the efforts/steps made so far. On the other hand the Accused person claimed he pointed the individuals out to Police and they did not act. The Court granted 2 months for the State to complete investigations.
31. The Pre-bail report filed on 15/7/2024 depicted the Applicant with no fixed abode but had/has family ties in Meru & Nairobi and family agreed to look for support in terms of Bail/Bond. The victim's family is devastated the deceased only 19 years was the future promise of grandparents and young sibling and therefore opposed bail/bond granted to the Accused person.
32. Bail/Bond is a constitutional right, however, compelling reasons by ODPP is that investigations were not complete awaiting arrest of 2 Accomplices/Suspects.

Disposition

33. The Court shall await Progress/Status Report within 30 days on completion of investigations
34. The Applicant to obtain 2 contact persons and fixed abode in Nairobi within 1 month
35. Further Mention for Directions on Review of bail & Bond Terms on 10/11/2025.

RULING DELIVERED DATED SIGNED IN OPEN COURT AT CRIMINAL DIVISION - MILIMANI ON 9/10/2025 VIRTUALLY/PHYSICALLY

M.W. MUIGAI

JUDGE

