

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL CASE NO. E014 OF 2024**

**REPUBLIC.....PROSECUTION**  
**VERSUS**  
**FRANCIS NDIRANGU.....ACCUSED PERSON/APPLICANT**

**RULING**

1. By way of Notice of Motion dated 24<sup>th</sup> June 2025, the Applicant seeks the following orders;

**1) The Honourable court be pleased to review and/or set aside the court orders issued on 19.12.2024.**

**2) The Honourable court be pleased to admit the applicant on favorable bond terms pending the determination of the suit.**

2. The Application is premised on the grounds on the face of it and the averments of the Accused person.

3. The deponent averred that after he was charged with the offence before court and upon making an application for bond, the same was declined for the reason being that some of the witnesses the state wishes to rely upon are my biological children, relatives and close friends and the possibility of interference with the credibility of their testimony is high. He stated that they have since testified as witnesses before this court and there are no longer prevailing and compelling circumstances to deny admitting him to favorable bond terms since all the remaining witnesses are experts and professionals from different state departments.

4. The accused stated that his property is laying to waste since his arrest on 5.7.2024 and he has never made any formal arrangements on the management of his estate. Further, that he is presumed innocent until proven guilty as provided for under Article 50 (2) of the constitution of Kenya 2010 and the offence he is charged with is bailable under the law. He urged the court to review its orders and admit him to favorable bond terms. He stated that he would abide by the terms and conditions granted by the court when released from lawful custody.
5. In response to the application S.G.Thuo, Prosecution Counsel swore an affidavit dated 27<sup>th</sup> June 2025. He deponed that the accused person was denied bond by this Honorable Court in a ruling delivered on 19<sup>th</sup> December, 2024 largely on the premise of likelihood of witness interference and for the safety of the accused person himself. Further, that the 12 witnesses have testified so far in this matter, some who include very close relatives of the accused persons and some under the Witness Protection Agency, and our PW-1, the biological son of the accused person swore a detailed affidavit then in opposition of release of his own father on bond.
6. He urged that the Applicant has not demonstrated any grain of proof that the circumstances existing then that led to his denial of bond, have changed. The deponent stated that this Court should take judicial notice that this matter always elicits great public interest, that the court is usually jam-packed to the brim with relatives of both the deceased and the accused, and that the same do not see eye to eye. That the Applicant's own brother one Paul Kariuki Ndirangu on the 29<sup>th</sup> day of May, 2025 at 2240 hours made an allegation at Eldoret Central Police Station vide OB 142/29/5/25 against PW-1, his own nephew over allegations of threats to kill, and the

extraneous issues surrounding the same was to do with release of documents belonging to the siblings of PW-1.

7. Counsel stated that the Applicants proxies' likelihood of deploying revenge measures against the witnesses is not moot, and the likelihood of revenge from relatives across the other divide is not remote given the hostilities harbored amongst themselves. He stated that the issue of properties laying to waste should be brought formally before a court of competent jurisdiction and this Honorable court should not be swayed to delve into sideshows that have not been formally filed.
8. Counsel stated that the offence is serious in nature and attracts a death sentence if found guilty hence highly likely to abscond Court proceedings. In addition, thereto, the accused eldest son one Sammy Ndirangu, the elder brother of the deceased Elias Kiprotich, the deceased mother Divina Tanui, and the deceased cousin Amos Birgen all swore various Affidavits dated 1<sup>st</sup> July 2025 wherein they vehemently opposed the accused application to be released on bond for the reasons therein given a summary of which is as hereunder.
9. Sammy Ndirangu stated that he has three siblings, currently school going and he has taken out letters of Administration for his mother's estate to protect and preserve it from waste. He annexed and marked as SN-1 the Application for Ad Colligenda Bona dated 30<sup>th</sup> June 2024. He recalled that on 24<sup>th</sup> July 2024, he received the terrible news of his mother's death and further information that his father, one Francis Ndirangu, was involved.
10. The grisly murder and mutilation of the body of his mother has affected him to date. He pointed out that the accused's allegation that he wants bail to come and manage the affairs of the estate are a cover up and his true

intention of the Accused is to come and sell the assets, intimidate them from the Case, and justify his actions. He stated that there are compelling reasons outweigh the right to bail.

11. The deponent averred that prior to his arrest, the “Accused person” threatened him through phone calls and messages and he is apprehensive of his safety as well as the safety of his siblings. He wrote to the Director of Criminal Investigation complaining about the threats issued vide a letter dated 23<sup>rd</sup> July, 2024 which he annexed and marked as SN-3. He urged the court not to allow the application.

12. Elias Kiprotich stated that the victim’s family is yet to come to terms with the death and further that the accused persons’ safety is at risk, recalling that when he was present in Court, there was a serious tense moment in Court on the date of the arraignment of the “Accused Person” to appear and many people were milling around him. They were very angry at what they had heard from the media concerning the case. He urged the Court to deny him Bail due to the public safety and peace and security of the deceased.

13. The deponent averred that he was also highly concerned with the conduct of Paul Kariuki Ndirangu and the “accused Person”, they were presently pursuing the change of titles to deny and defeat the provisions of the **Law of Succession Act Cap 160 Laws of Kenya**. That the allegations that his Estate is lying to waste is a pure lie and should be wished away by the Court. He further deposed that the real and perceived danger that they face is that the accused person may embark on an elaborate plan to revenge. He therefore urged the court to deny the applicant his application.

14. Divina Tanui gave a summary of the facts underlying the case in her Affidavit and urged that as a family, they are still traumatized by the heinous nature of the murder of her daughter. Further, that the family is now living in fear of the applicants' release on Bail as they do not know who in their family will be the next target/victim.

15. She indicated that she is now the guardian of the deceased's minors who depend on her for protection, guidance, encouragement and nurture. Further, that she is apprehensive that the accused person is only seeking his release to come and acquire and waste the estate of the deceased. She additionally stated that she has filed a petition for grant of probate ad colligenda bona to protect the estate of the deceased and is apprehensive that by filling this petition the accused person may have a vendetta against her. She expressed fear of intimidation and urged the court not to allow his application.

16. Amos Birgen, a cousin to the deceased urged that the gruesome nature of the murder of his cousin has left the family traumatized, disturbed and vulnerable. Further, that it seems like the accused was sending a message to their family, and he fears that nothing can stop him from committing the same acts again if released on bail/bond. Considering the Accused person is known to the family his release would greatly prejudiced the investigations as he is in a position to exert undue influence so as to pervert the course of justice. He urged the court not to allow the application.

### **Applicants' Submissions**

17. The applicant reproduced the contents of his affidavit and reiterated that the witnesses that were feared that might be compromised by the accused person if released on custody being PW1, PW3, PW6 & PW7 eventually

testified before court. He cited **Article 49(l) (h) of the Constitution of Kenya** and **Section 123A of the Criminal Procedure Code** on bail. He additionally cited the case of **Edel Sum v Republic [2022] Eklr** where the court reiterated the purpose of bail. He urged the court to allow the application as prayed.\_

### **Respondents' Submissions**

**18.** Counsel for the respondent laid down the background of the case and proceeded to address the issues for determination. He urged that there are still compelling reasons to deny the Accused bail. These include issues on the safety of the victim, the accused absconding due to the seriousness/or nature of offence committed and due to public safety concerns. Counsel urged that **The Bail and Bond Policy Guidelines at Action 4.9(f)** provides for the need to protect the victim or victims of the crime from the accused person in consideration of bail application. He cited **Section 123 A of the Criminal Procedure Code** and **Section 11 of the Victims Protection Act**. He urged that the immediate family of the deceased are considered victims who have suffered trauma, emotional distress and pain following the murder of their loved one Rael Cherop Biwott (Deceased).

**19.** Counsel submitted that the 1<sup>st</sup> compelling reason they oppose the Accused person's release on bail is on the rights of victims to this case as is provide for under **The Victims Protection Act, 2014**. That as stipulated in **Section 39** of the said Act, one of the objects of the Act is to recognize and give effect to the rights of victims of crime. That the Principles of the Act are set out in **Section 4**. He cited the case of **Joseph Lendrix Waswa v Republic** where the court stated that one of the principles stated in **Section 4 (1)** of the Act is that a court or administrative body or persons performing any function under the Act:

“Shall respect and uphold the values and principles in the Constitution, and in particular, be guided by the provisions of Article 10, 27 (4), 47, 48 and 49 of the Constitution.”

20. He placed reliance on **Section 2 (b) and 9(2) of the Victims Protection Act**, and cited the cases of **Republic v Gasike W** and **Githinji v Republic** on compelling reasons to deny bail with regards to protection of victims. He additionally cited the case of **R v John Matara Ong’oa** and **Republic v Benard Kipasi Mayongo** on the rights of a victim as provided under **Section 10** of the Act.

21. Counsel urged that the 2<sup>nd</sup> compelling reason is on public safety and on the safety of the Accused. The case at hand involves a case of love triangle between the Deceased Rael Cherop Biwott, the Accused Francis Ndirangu and the colleague of the Deceased one Eric of Moi Teaching and Referral Hospital which was confirmed in the witness statement of PW6, who stated that the Accused on countless times had aired his concerns alleging that the deceased was committing infidelity behind his back with the said Eric and even went to the point of spying on him.

22. He urged that for this reason, they strongly oppose to the release of the Accused on bail as they are apprehensive that the safety of the MTRH staff will not be guaranteed, which was confirmed by Miriam Rotich a colleague of the Deceased who alluded to threats from the Accused. Further, that she stated that this has made her fear for their general public safety and therefore opposes the release of the Accused from custody.

23. Counsel submitted that given the widespread news of the murder of the deceased, the Accused is well known and remembered by many for the gruesome and heinous acts he committed and if released on bail his security is not a guarantee as his release may cause an outrage from the community and public. Counsel cited the case of **Benson Ammi Komba v Republic** and **Republic v Gitau & 3 others** in this regard. He additionally cited the case of **Republic v Ali & 2 Others** and **Republic v Gibson Kiplagat Bett** in support of this submission.

24. Counsel submitted that the last compelling reason as to why the accused should not be granted bail was on his character and antecedents. He pointed out that in his Affidavit Sammy Ndirangu, the eldest son of the accused submitted that the accused has been using his brother one Paul Ndirangu to unleash violence and narcissism on him and his relatives and he fears that if the accused is released the two might work together in intimidating him and his family. The accused character before he committed the gruesome act to the deceased and before his arrest is questionable this is clear in the statements of his children and a few witnesses who claim that the accused was violent and used to cause bodily harm to the deceased just a day before her disappearance. He urged the court to dismiss the application and uphold the orders made on 19<sup>th</sup> December 2024.

### **Analysis & Determination**

25. Having considered the Application for review of bond based on the depositions made in the various Affidavits file for and in opposition to the same as herein already summarized, it is my considered opinion that the sole issue for determination is whether the circumstances under which the court denied the accused bond at the commencement of the trial have since

changed as has been submitted by Counsel for the accused court to warrant a review of that earlier decision and now grant the accused bond.

**26.**In considering whether there has been a change, it is indeed correct as Counsel has stated that the relatives of the accused who were lined up as witnesses and who the prosecution was apprehensive would be threatened, intimidated and or coerced during the pendency of the hearing have already testified. To enable the court appreciate the circumstances that were pertaining before the hearing commenced to warrant it reach the conclusion to deny the Application of the release of the accused on bond, the court has had a re-look at the Ruling it delivered on 19<sup>th</sup> December 2024 to that effect.

**27.**In the said Ruling, whereas the court appreciated the accused right to bail as enshrined in article 49(1)(h) of the Constitution, the court (See paragraph 68 thereof), the court was also of the firm view that under the very same said Constitution at Article 50(9) upon which the Victim Protection Act Cap 79A is anchored, the court must equally ensure that the rights of victims are secured safeguarded, upheld and protected at all times *throughout the trial* (See para 69 thereof)

**28.**At paragraph 77 of the said Ruling the court observed that reaching a balanced approach on the right of the accused to a fair hearing which includes the release of the accused on bond if there are no compelling reasons militating against such a release and which is always the first and foremost consideration while also ensuring that the trial is free and fair to the victim as well by the court securing, safeguarding upholding and protecting their rights too as the dictates of each particular case will demand is indeed the cornerstone of the justice of every case

29. In this regard, Section 10 of the Victim Protection Act No. 17 of 2014 is instructive. It provides as follows;

**10 (1) a victim has a right to: -**

**(a) Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;**

**(b) Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and**

**(c) Have their property protected.**

30. In his fresh bond application, the accused has reiterated his rights as provided under Article 49(1)(h) and 50(2) of the Constitution. He has further stated that because he did not make any arrangements at the time of his arrest, his property is going to waste and he needs to be released so that he can properly manage the same. Apart from stating that the witnesses who there was apprehension that he would threaten and intimidate have since testified, he made no further reference to this issue in his Application.

31. However, it is clearly apparent from the depositions made by the Counsel for the State and all the victims' relatives who swore Affidavits whose contents are already herein summarized that the prosecution on their part is very apprehensive that notwithstanding the fact that the accused children and relatives have already testified, the threat of revenge being exerted by

upon the witnesses by the accused if released does exist. Further that the animosity between the two families is still palpable and as deposed by the accused son Sammy Ndirangu, the accused brother one Paul Ndirangu has “unleashed violence and narcissism “on him and his relatives, showed conduct that is untoward towards him and continues to harass him. It is noteworthy that these depositions were not at all controverted by the defense in any way.

32. Further to the above, I note that the reasons advanced by the victim’s family in objecting to the release of the accused on bond notwithstanding the fact that the relevant witnesses have since testified actually do mirror the reasoning of the court on the issue of the need for the court to ensure that throughout the trial, the court must ensure that the victims are free from intimidation, harassment and fear and that their safety and that of their family is safeguarded as provided under Section 10 of the Victim protection Act. For emphasis, paragraphs 85-102 of my Ruling delivered on 19<sup>th</sup> December 2024 is reiterated. On the issue of whether or not the accused can be trusted to attend court as and when required if released on bond, I herein reiterate that contents of paragraphs 103 & 104 of the said Ruling.

33. Given the above, I am persuaded that the finding by Lessit J (as she then was) in the case of **R. V. Fredrick Ole Leliman & 4 Others, Nairobi Criminal Case No. 57 of 2016 [2016] eKLR**, Lesiit J is very relevant and also applicable to this case. Therein her ladyship stated thus:

**“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 and individual or individuals\_or the public at large; likelihood the accused may commit other offences. In this instances 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.”**

**34.**Going by the reasoning in the above decision, it is my very well considered opinion in light of the issues herein highlighted that the justice of the case in the instant case will only be preserved by the accused remains in custody throughout the trial. The upshot therefore is that no reasons have been advanced by the defense that are sufficiently compelling to warrant a review of the order of the court made on 19<sup>th</sup> December 2024 denying the accused bond. I therefore find that the said Application lacks merit and the same is accordingly dismissed.

**Read dated and Signed at ITEN on 2<sup>nd</sup> October 2025**

**E. OMINDE**  
**JUDGE**