



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kireithi (Criminal Case E004 of 2025)  
[2025] KEHC 13776 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13776 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL CASE E004 OF 2025  
AK NDUNG’U, J  
OCTOBER 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ESTHER WAMAITHA KIREITHI ..... ACCUSED**

**RULING**

1. The Accused person in this case, Esther Wamaitha Kireithi is charged with murder contrary to Sections 203 and 204 of the Penal Code. It is alleged in on the night of 31<sup>st</sup> May, 2025 and 1<sup>st</sup> June 2025 at Majengo Area in Laikipia East Sub-County within Laikipia County murdered Leorard Kibue Muhika.
2. The Republic has opposed bail through an affidavit dated 12/06/2024 sworn by CPL Stephen Simam, one of the investigating officers. The reasons advanced for opposing bail as set out in the affidavit are:-
  - i. That the accused person therein had been charged with the offence of the murder of Leonard Kibue Muhika contrary to Section 203 as read with Section 204 of the Penal Code.
  - ii. That the investigations by DCI Laikipia East revealed sufficient evidence to support the charge of murder that the accused was facing before the Honourable Court.
  - iii. That although *the Constitution* makes provision in Article 49 (I)(h) for an accused person to be released on bond or bail on reasonable conditions, the right was not absolute but a matter of discretion on the part of the court.
  - iv. That investigations revealed that on the night of 31<sup>st</sup> May, 2025 and 1<sup>st</sup> June, 2025 the accused person assaulted the deceased, who was her romantic partner, with a knife, which assault led to his death.
  - v. That the assault which took place at their shared home within Majengo Area, was witnessed by FMG, who was the accused persons child aged eleven (11) years old.



- vi. That the minor as well as other neighbors of the accused person, had recorded statements, would be prosecution witnesses in the trial and their statements form part of the committal bundle supplied to the defense.
  - vii. That due to the familial and community relationship, those witnesses were very well known to the accused person who was well aware of their place of abode and there was a reasonable apprehension that there would be interference and intimidation of those prosecution witnesses either directly or through proxies with an aim of preventing them from giving their testimony in that Court.
  - viii. That the honourable court had a constitutional duty to balance their rights of all persons and it was their humble submission that the court could protect their right that was lost under Article 26, by providing an enabling environment for the prosecution witnesses to testify without any fear or interference by declining to allow the accused person bail or bond.
  - ix. That the minor witness is considered a vulnerable witness particularly due to his very young age and they urge the honourable court to apply the “best interest principal” as provided in Article 53 of *the Constitution*.
  - x. That it would be in the best interest of the minor if the accused was remanded in custody pending trial as the accused was his mother and would be able to influence his testimony owing to the mother and child bond they had.
  - xi. That the accused person therein had been charged with the offence of murder and if found guilty the punishment meted out could be that of the death penalty and therefore there were more probabilities and incentives for the accused person to abscond` if released on bail or bond pending the determination of the hearing.
  - xii. That the prosecution had overwhelming and irrefutable evidence that points to the accused’s guilt, thus there was a high probability that the prosecution would secure a conviction. The prosecution was apprehensive that if the accused person was released on bail or bond she may flee the jurisdiction of the court in fear of being sentenced.
  - xiii. That they humbly pray that the honourable court does find that there are compelling reasons as to why the accused person should not be released on bail or bond.
  - xiv. That the release of the accused person on bail or bond pending the hearing and termination of the trial was not absolute and was at the discretion of the honourable court they thus urge this honourable court in view of the above reasons not to grant or release the accused persons on bail or bond.
3. In State’s Counsel submissions, it was submitted that due to the social relationship, the witnesses are very well known to the accused who is well aware of their place of abode. Therefore, there is a reasonable apprehension that there would be interference and intimidation of those prosecution witnesses, either directly or through proxies with an aim of preventing them from giving their testimony in court.
  4. Regarding the nature of the charge and the seriousness of the punishment, the accused had been charged with offence of murder which is a capital offence with the prescribed punishment being death sentence. Even though the death sentence is no longer mandatory, it is still one of the possible punishments for the offence, with the alternative punishments also being extremely severe. Given the nature of the charge and the seriousness of the punishment, it can safely be assumed that there are more probabilities and incentives for the accused to abscond, should she be granted bail or bond. In this case, the deceased met his death in a gruesome manner which was an affront to his human dignity. The



cause of death, as per the postmortem, was due to penetrating chest injury injuring the heart. We urge the court to take this into consideration when considering the nature of the charge as a compelling reason to deny bond.

5. Concerning the strength of the prosecution's case, it is submitted that the accused was fully aware of the weight and strength of the case against her. It is justifiable to subject the applicant to pretrial detention given the evidence against her was strong, compelling and overwhelming. It should be presumed that the accused had an incentive to abscond and should therefore be denied bail.
6. It is trite law that bail should not be refused unless there are sufficient grounds for believing that the accused will fail to observe the conditions of his release.
7. In *S vs. Nyaruviro & Another* (HB 262-17, HCB 122-17, XREF CRB 1454A-B-17) [2017] ZWBHC 262 (31 August 2017), the Court held that:

“The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established where there is a likelihood that the accused, if he or she were released on bail, will

- i. endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
  - ii. not stand his or her trial or appear to receive sentence; or
  - iii. attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
  - iv. undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system.
8. In the instant trial, the issue that stands out as a ground upon which to deny bail is the likelihood of interference with witnesses particularly one minor witness who is said to be her son.
  9. The pre-bail report makes a finding that the accused does not pose a significant flight risk and has a reliable and willing surety in her grandmother, Agnes Karungari Kimaru, who is offering both moral and financial support.
  10. It urges that should the court be inclined to grant bond, it is recommended that the accused be released under strict conditions, including:
    - a. That she resides with her grandmother in Nyahururu, away from the scene of the offence and the aggrieved community.
    - b. That she reports regularly to the nearest police station as directed by the court.
    - c. That she has no contact with witnesses or the victim's family during the trial period.

The officer recommends that subject to the court's discretion, and considering the principle of presumption of innocence, safeguards, the accused is suitable to be granted bail in order to balance both the rights of the accused and the interests of justice.

11. I have applied my mind to all issues raised. Am persuaded that in the circumstances of this case, granting bail with stringent bail conditions would serve the ends of justice.
12. I admit the Accused to bail on the following terms;



- a. A personal bond of Kshs. 500,000 with a surety of a like sum.
- b. The accused is not to contact any of the witnesses and particularly FMG.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1<sup>ST</sup> DAY OF OCTOBER, 2025.**

**A.K. NDUNG’U**

**JUDGE**

