



**Republic v Ambeyi alias Vicky (Criminal Case E075 of 2024)
[2025] KEHC 16049 (KLR) (Crim) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 16049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E075 OF 2024
MW MUIGAI, J
OCTOBER 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

VICTOR AMBEYI ALIAS VICKY ACCUSED

RULING

1. Victor Ambeyi alias Vicky has been indicted for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the information are that: On 10th November 2024 at Angels Village Estate within Njathaini area in Kasarani Sub county within Nairobi County murdered Catherine Waceke Kimotho
3. The accused denied the charges and applied for bail pending Trial .

The Accused Grounds

4. The Accused is a 1st offender, he is a citizen of Kenya he is not a flight risk. He is presumed innocent. The accused prays for reasonable bond terms. That the Accused has been cooperating with the Police. He is also willing to abide with conditions granted by the court.

Replying Affidavits.

5. The Prosecution filed the affidavit of Sergeant No. 83877 Cornelius Rotich who is the Investigating Officer and depones that the deceased was 78 years old and she was left in her home compound in company of accused.



6. That the accused was her employee and worked as a shamba boy within Angels village estate in Kasarani where the deceased farm was and where she also lived .That the deceased went missing and the accused could not be traced after he vanished from home.
7. He was later contacted on phone when he gave contradicting information on his whereabouts. That the accused promised to return to the home but he switched off his phone and became unreachable.
8. The deceased family, her house girl, neighbors and police searched for the deceased early morning of 11th November when the deceased was discovered in a cow dung septic tank in a blanket wrap which was given to accused by deceased when he was hired.
9. That the accused was traced and arrested in Kinoo and he led the DCI to a phone repair shop in Githurai 44 where the deceased phone was recovered. The accused had given the phone as collateral in exchange of Ksh 3500/= .
10. Lastly that 9 prosecution witness are known to the accused, this includes the accused's brother, the children of deceased and neighbors who are well known to him. There is likelihood that after release on bail/bond, he will may interfere with key witnesses
11. There is also great incentive to abscond once out on bond considering evidence against him.

The Victim's Family Affidavit

12. Anne Kamotho who is the daughter of the deceased in the case filed Affidavit opposing bail/bond for the Accused person. The affidavit was sworn on 8/6/2025 and the victim's case is that the accused's release poses threat to the administration of justice and would also endanger the safety of key witnesses.
13. The Accused hails from Malaba border and comes from the same village with the deceased house-help called Maureen who is a key witness in the case .The accused was introduced to her through her cousin and the accused joined gardening work at the deceased's residence where they both worked. The accused may or curtail / influence her evidence.
14. That reports have been received of the house help receiving threats from the accused family and village mates the house-help expresses fear. Her testimony is central to the case .
15. That the witness was on the scene and interacted with the accused who went on milking cows; the accused returned home after the offence and interacted with house help milking cows. The witness was also present when the body was recovered within the home. The accused was traced in Githurai.
16. That he hid the deceased house keys and he concealed butcher knives from the home.
17. The application was canvassed through written submissions.

The Prosecution's Submissions.

18. The Prosecution submitted compelling reasons that the accused is a flight risk and that he is likely to interfere with witnesses .That he fled from the deceased home and was later on traced Kinoo on 12th November,2024 .That the circumstances demonstrate that he is a flight risk. The prosecution rely on the case of Republic -Vs- Shikuku alias Ben 2022 KENC 12139 eklr where the court held that failure to surrender after incidence does not carry favor with Court .In that case the accused went underground for 2 years he when he was a fugitive from justice .This past conduct was a compelling reason to deny him bond ,that he was a flight risk and he could not remember.



19. Republic vs Fredrick Ole Leliman & 4 others [2019] eKLR where bail /bond was denied for fear of interference with witnesses, that includes, influencing or compromising or inducing or terrifying the witnesses.
20. Lastly that the accused is known by key prosecution witnesses who are the children and neighbors of the deceased.

The Accused Submissions .

21. The defense frames issues as whether the accused is a flight risk , whether there is credible of witnesses interference and whether seriousness of charges alone justify denial of bail.
22. The defense referred to the provisions of Article 49 (1)(h) of *the Constitution* on grant of bail and bond unless compelling reasons are presented by Prosecution. The Defense referred to the case of Michael Juma Oyamo -Vs- Republic 2022 KECA 14 eklr & Republic -Vs- Joktan Mayende Criminal Case No 55 of 2009 .
23. The accused reiterates that he has a fixed abode in Malaba border which is within the Republic and relies on the case of DCIO West Pokot Vs Fred Komo Nguru 2021 KEHC 627 eklr where bail was granted for persons who resided at the border.
24. Further that the allegations of witness interference are unsubstantiated and speculative. The accused was in lawful custody when the threats and calls were made.
25. On whether gravity of the offence affects his right to bail, the accused relies on the case of Republic Vs Nuseiba Mohammed Haji Osman 2018 KECA 33Klr where the court held that claims against accused aimed at curtailing right to liberty must not be on speculation or conjecture

Prebail Report

26. The accused is 22 years, he is single and he does not have parental responsibilities. He hails from Kakamega in Lugari Gabriel village. He has 5 siblings and has a healthy relationship with the family except with his estranged father. The accused mother and siblings support his application for bail who will ensure his attendance.
27. The family understands the gravity of the offence and severity of sentence.
28. The community were also interviewed and the local administration indicate that he has not been in conflict with the law. The chief indicated that he is a reserved person . That no meaningful changes to the peace and stability would be caused if he is released.
29. The family of the deceased was interviewed, the family is opposed to granting bail. The deceased was 77 years old the accused is likely to interfere with witnesses and abscond court attendance. Lastly that the DCI claims that the accused was arrested when enroute to Kakamega and was at his cousin's house.
30. The Probation officer concludes that that there is no fear if he is released on bond. That he has a fixed abode in Kakamega and there are positive reports from his home where his safety is also assured. Further that the incident occurred in Nairobi and there will be minimal interference of victims.
31. The ODPP raised issue with the Pre-bail Report that The I/O had allayed no fears should the Accused person be admitted to bail/bond. Yet the I/O filed detailed Affidavit opposing bail/bond to the Accused person and detailed the circumstances.



32. The Probation Officer reiterated that he spoke to DCI Kasarani Police Station & Mr. Rotich and they had no objection to bail /bond as long as there were stringent measures.

Analysis & Determination .

33. Article 49 (1) (h) of *the Constitution* refers to the right to arrested persons right to bail , providing that:

“An arrested 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.”

34. The right to bail is not absolute and can be deprived where compelling reasons exist and are proved by the prosecution. The grounds must be proved beyond mere speculation.

35. In the case of Republic -Vs- Musili Dewrock Kithome & Another (2012) eKlr Hon Mwilu J (as she then was) described compelling grounds to deny bond as beyond likelihood , guesswork fear or doubt :- holding that :-“. I do not understand ‘compelling’ to mean a likelihood that may or may not be, guesswork or a fear or doubt that the accused will not attend trial. ‘Compelling’ means the opposite of all that, it is the opposite of whimsical thought or imagination, it means powerful, irresistible, obliging, overpowering, forceful, constraining and providing a strong motive. To my mind therefore the prosecution must give such reasons as carry the above adjectives so as to have bond/bail denied. Again, it cannot help to merely drop an allegation that there are compelling reasons, to me these allegations must be substantiated to the satisfaction of the court for bond/bail to be denied.”

36. Granting bail is the based on the Constitutional and statutory provisions on the grant or denial of bail & bond.

The Bail & Bond Policy Guidelines of 2015 stipulate the factors that are considered in deciding to grant or not grant bail or bond to the Accused person. Current practice on application of bail or bond is informed by such factors as:

Nature of the charges, seriousness of the punishment; strength of prosecution’s case.character and antecedents of the accused; failure of accused to honor bail terms previously, likelihood of interfering with witnesses; need to protect the victim of crime and accused person; relationship between the accused and potential witnesses; age of accused if the Accused is a child/young offender; whether Accused person is a flight risk; whether accused person is gainfully employed; maintenance of public order, peace or security and protection of the Accused person.

37. In the case of Harish Mawjee & Another -Vs- Republic 2020 KEHC 1861 eklr Lessit J (as she then was) addressed the issue of bond and reasonable terms and supervision to facilitate the accused right :- That

“There are certain overarching principles that govern the administration of bail and bond by Courts. First of all, courts have sole discretion to give determinate bond terms and they can impose a combination of terms including supervision of accused released on bail if found necessary. Secondly, bond terms should not be arbitrary, but the court must consider the relevant factors affecting issuance of bond including penalty of offence and the accused ability to meet the bond terms. Thirdly, the bond terms should not be excessive or unreasonable. Fourthly, an accused has right to seek review of bond terms from trial court or high court or appeal.....” See paragraph 7 of the Ruling on revision.



38. This Court considered grounds for denying or granting bail /bond. The affidavits filed by the prosecution and the victim and the pre-bail reports based on interview of the community victim and the accused's family .
39. The issues framed for determination of the application are : whether the accused is a flight risk and whether there is risk of witness interference whether the court should grant bail.

Whether the accused is a flight risk

40. The deceased's daughter has indicated that the accused resided at the deceased home where he was employed to work as a gardener. That the accused escaped the home after the incident he could not be reached. That he was later traced in Githurai on 12th November, that he had given conflicting details of his whereabouts. He had also given the deceased phone as collateral at the phone shop where he was given 3500/= .
41. Being a flight risk is demonstrated by active steps evidenced by arrangements to either flee the jurisdiction of the court, or to avoid arrest and trial.
42. The accused changed location from Kasarani to Githurai and also allegedly gave the deceased phone as collateral for ksh 3500/= .
43. The Victim, deceased's daughter deposed that the Accused fled the scene and was arrested while attempting to board a bus to the border town. This clearly demonstrates a real probability to abscond coupled with the fact that after deceased could not be found his employer the Accused took off and left with deceased's phone that was pawned and recovered upon his arrest.
44. I find that the accused's conduct is not favorable and is compelling as bail and bond is granted to ensure attendance of Court sessions as and when required.
45. In the case of Republic -Vs- Dwight Sagaray & Others Criminal Case No 61 of 2012 the issue was whether bond could be granted to a foreigner where the accused was a Venezuelan, the court resolved that the answer to lack of abode and flight risk is to grant stringent terms.
46. I also note that the accused's family understands the nature of offence and is supportive of his application proving that suitable surety can be availed to guarantee compliance of bond terms.
47. The deceased's daughter also deposed that that the accused hails from Malaba border and that he would easily cross the border making it difficult to trace him.
48. Contrary to these claims, the Pre-bail report indicates that he hails from Kakamega in Lugari district where he has not been found to be in conflict with the law and his release on bond will not affect the peace and stability of the area.
49. One cannot be penalized for residing near the border that by and of itself is not a reason to deny bail and bond, but in the instant case the Accused person's conduct preceding arrest makes him a flight risk. The deceased's family , house girl, neighbors and Police began searching for the deceased early morning on 11/11/2024 and the Accused was gone until he was traced arrested on 12/11/2024.

Whether there is chance of witness interference .

50. The deceased's house-help identified as Maureen is alleged to come from the same village with the deceased which is in Malaba border. That she is a key witness and was known to the accused. The Investigating officer also indicates that the accused is known to the deceased neighbors and children.



51. The Probation officer writes that the accused would reside at Kakamega where he has a fixed abode and there is a minimal chance of interference in Nairobi where the offence occurred and witnesses reside.
52. The arguments have been considered together with the particulars of the offence and affidavits filed. The offence occurred at the deceased home and the accused is known to the house-help who is the coworker, the deceased daughter and some neighbours .
53. It is claimed that the accused relatives and village mates from Malaba where the witness allegedly resides have issued threats and made calls making the witnesses afraid. The threats are from the fact that the Accused and Housemaid families reside same place.
54. Courts have previously held that where there is more than speculative apprehension that an Accused Person could inflict genuine fear and anxiety in potential witnesses, the Courts ought to consider that as a factor in denying bail. (See R v Joseph Wambua Mutunga & 3 Others [2010] eKLR.)
55. In the case of Felity Sichangi Nyongesa -Vs- Republic [2014] eKLR the accused filed an application for review of a trial court’s decision declining him bail. The issue for determination related to witness interference through persons who paid the complainant to recant her statement. Hon. Mabeya J held that there was no room for speculation and negative inference that the actions were taken at the behest or with the knowledge of the accused.
56. That there must be proper basis holding that:

“Nowhere in her statement of 29/01/2014, did the complainant state that she had been promised money by the complainant. My view is, where liberty of a person is at stake, there can be no room for speculation or negative inferences without proper and adequate basis. In this case, the fact that the alleged acts of one Rodgers and mama Maurice were for the benefit of the accused, it can not be inferred that those persons were doing so at the behest, consent or even knowledge of the accused. I see no evidence of interference of witnesses by promise of money.”
57. In Republic vs Joktan Mayende & Others 2012 KEHC 1551 Gikonyo J observed on interference with witnesses;

All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. 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.
58. The Victim’s submissions are in line with the Investigating Officer’s deposition of how the Accused person was arrested and arraigned in Court on 2/12/2024.
59. Of importance, detailed information is that the House maid Maureen worked with the Accused person for the deceased and she introduced him to the deceased and brought him to work for the deceased. As they are from the same home area , there is likelihood of interference and it is also confirmed by the Probation Officer’s Report.



60. Further, chances of contact and therefore possibility of interference can be avoided through stringent bond terms.
61. Similarly stringent bond terms can be given to dissuade chances of the accused fleeing the jurisdiction of the court and further frustrating the final determination of the trial.

Disposition

62. In the upshot, I find that the prosecution has proved compelling reasons in line with Article 49 (1) (h) of *the Constitution* and Section 123 of the Criminal Procedure Code to deny the accused his right to bond.
63. The accused is entitled to bond upon the Prosecution expediting the hearing and having especially the evidence of the housemaid taken first to ally the issue of interference with witnesses and thereafter grant of bail & bond maybe considered.

**DELIVERED SIGNED & DATED IN OPEN COURT CRIMINAL DIVISION OF HIGH COURT
AT NAIROBI THIS 30/10/2025 VIRTUALLY/PHYSICALLY**

M.W. MUIGAI

JUDGE

