



**Republic v Soita alias Musalia (Criminal Case E002 of 2025)
[2025] KEHC 15501 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E002 OF 2025
AK NDUNG’U, J
OCTOBER 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH PIAT SOITA ALIAS MUSALIA ACCUSED

RULING

1. The Accused person, Joseph Piat Soita Alias Musalia is charged with murder contrary to Sections 203 and 204 of the Penal Code. It is alleged in the information dated 29/01/2025 that on 01/01/2025 at Camp Mbuzi area in Ruai, Laikipia East sub-county within Laikipia County murdered Brenda Lesiamito Nagure. On 05/02/2025, he pleaded not guilty to the charge.
2. The Republic has opposed bail through an affidavit dated 24/02/2025 sworn by PC Collins Shivatse, one of the investigating officers. The reasons advanced for opposing bail are:-
 - i. That the accused is a flight risk since he fled after committing the offence and it took the intervention of the deceased’s brother who lied to him that the deceased was alive in order to avail himself in hospital where he was arrested. After his arrest, a bag was recovered with his clothes which was an indication that he had intention of evading arrest and were it not for the intervention of the deceased’s brother and police, he would still be at large.
 - ii. That he has no known place of abode or any known familial or economic ties so it will be impossible to trace him if released.
 - iii. Deceased’s relatives have recorded statement and will be crucial witnesses and the accused know them well and their place of abode hence there is a reasonable apprehension that there will be interference and intimidation of these witnesses.



- iv. That there are more probabilities and incentives for the accused to abscond since he is charged with the offence of murder which if he is found guilty, the punishment could be that of death penalty.
 - v. That the prosecution has overwhelming and irrefutable evidence that points to the accused guilt and there is a high probability that the prosecution will secure a conviction thus there is fear that if released, he may flee from the jurisdiction of this court.
3. In response to the prosecution application opposing bail, the accused's counsel filed a replying affidavit dated 07/05/2025 sworn by the accused person. He averred that bail/bond is a right accorded by *the Constitution* and he should be presumed innocent until the contrary is proven. That he is ready to abide with the terms that this court may set upon release on bail. He denied that he had threatened his parents with death as indicated in the probation report and that it was just a mere allegation without proof as he has never been arrested nor charged with any criminal activities. He also denied that he had threatened Ketilo's wife and that he had told the deceased's children that their mother will not celebrate new year and he averred that the same was not reported to the authorities hence it was just mere allegations. He urged the court to note that the probation report noted that some people had said that he was a welcoming person and non-violent. He further averred that the investigating officer failed to lay a basis to satisfy that he had attempted to run away and had fled and was arrested later since at the time of the incidence, he was working in Nanyuki where he was living with the deceased and their children.
 4. That the prosecution has failed to demonstrate existence of any compelling reasons as to why bail should be denied and has failed to show that he will interfere or intimidate the witnesses and that and what is stated in the affidavit for denial of bail are mere allegations with no proof.
 5. The prosecution's counsel filed written submissions. Counsel for the accused choose not to submit. The State counsel submitted that right to bail is not absolute and can be denied if there are compelling reasons. That what constitutes compelling reasons as per paragraph 4.26 of Bail and Bond Policy is that the prosecution only needs to satisfy the court on a balance compelling reasons that justify denial of bail. She submitted that the accused is a flight risk for reason that he fled after committing the offence and it took the intervention of the deceased's brother who convinced him that the deceased was still alive in order for him to avail himself in the hospital where he was arrested. Upon his arrest, a bag was recovered from him with his clothes which shows that he had intention of evading arrest. Further, he does not have a known place of abode given that the house he was sharing with the deceased was a rental house hence it cannot be considered as a permanent place of abode. Additionally, the pre-bail report confirmed that he had no fixed place of abode and that he is a flight risk.
 6. She maintained that he is likely to interfere with the deceased's relatives who have recorded statements and who are well known to him and he is aware of their place of abode. Other witnesses are his former neighbours whom he is likely to interfere with or intimidate. Additionally, the pre-bail report noted that the accused parents and the victim's family have indicated that he had threatened them on different occasions. She submitted that given the nature of the charge and seriousness of the punishment, it can be assumed that there are more incentives for him to abscond. Further, the deceased met her death in a gruesome manner which was an affront to her human dignity. On the strength of the prosecution's case, she submitted that the accused has been supplied with committal bundles and he is therefore fully aware of the weight and strength of the case against him. That the evidence against him is strong, compelling and overwhelming and this can be an incentive to abscond.
 7. I have considered what has been argued by the State counsel. I have also read the pre-bail report which is not in favour of the accused person.



8. Bail pending trial is a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict, must be reasonable. See Article 49(1) (h) of *the Constitution* of Kenya, 2010 which states that every accused person has a 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.”

9. “Compelling reason” is not defined in *the Constitution* or in any law that this court is aware of. The term is also not defined in Black’s Law Dictionary, Tenth Edition. However, the term “Compelling need” is defined there as –

“A need so great that irreparable harm or injustice would result if not met.”

A note following that definition states –

“Generally, courts decide whether a compelling need is present based on the unique facts of each case.”

10. Compelling reason therefore, in this court’s view, is a reason that must militate against granting the accused bail, such as proven likelihood of him/her not attending court, interference with witnesses, harm to witnesses or to himself/herself, and the like. The important word here is proven. It is not just a matter for the discretion of the court. He who seeks to deny an Accused person his constitutional right to bail pending trial must therefore place evidence before the court as would establish, on balance, the compelling reason urged. It is not enough to merely allege without evidence.

11. The reasons advanced by the prosecution for denial of bail are;

- i. Flight risk
- ii. Interference with witnesses.
- iii. Nature of the charge and seriousness of the punishment.
- iv. The strength of the prosecution’s case.

12. The third reason can be dismissed right away. The perceived seriousness of the offence and the sentence in my view can never be a compelling reason to deny an accused person the constitutional right to bail. Though the Judiciary Bond and Bail Policy 2015 lists the seriousness of the offence as a tenet for consideration, court must not lose sight of the fact that Article 49(1)(h) grants an accused the right to bail irrespective of the seriousness and the nature of the offence. In *R V Mwangi* [2016] eKLR the court held that: -

“Bail cannot be refused simply because the accused has been charged with a very serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the ground for refusing bail exists.”

13. Same applies to the fourth reason. The perceived strength of the prosecution’s case in my view is not a compelling reason to deny an accused person his constitutional right to bail. The Accused has a



constitutional and legal right to the presumption of innocence until and unless proven guilty to the required standard. In *Oscar Edwin Okimaru v Republic* [2021] eKLR it was stated that;

“To my mind, for this court to base its decision on the weight of the evidence to be adduced against the accused persons at the stage of determination of an application for bail, may well be prejudicial. While the Court is not necessarily barred from taking a dim view of the evidence in setting conditions for the grant of bail, that cannot be the basis for denial of a constitutional right to bail.”

14. Flight risk and interference with witnesses, if proved on balance, are compelling reasons to deny an accused person bail, one, because interference with witnesses will be subversion of justice, two, he might not turn up during trial.
15. In the present case, have those allegations been proved on balance? The prosecution has stated that the accused is a flight risk on account that he fled after committing the offence and it took the intervention of the deceased's brother who lied to him that the deceased was still alive and he was arrested in the hospital. Further, upon his arrest, a bag with his clothes was recovered from him which shows that he had all the intention to evade arrest. I have also read through the contents of the pre-bail report and his parent are against him being granted bail as they indicated that he is a flight risk. They further indicated that he left their home and in five years, they did not know of his whereabouts and he returned last year. It is further noted that he has no fixed abode as he has no known place of residence as his parents live in a rented house with no landed properties or house. The Accused himself did not allude that he has a fixed place of abode.
16. On the likelihood to interfere with the prosecution's witnesses, the State counsel argued that he is likely to interfere and intimidate the deceased's relatives and neighbours who are witnesses in this case. That he had tendencies of threatening people as he had threatened his parents with death and his brother's wife.
17. It is trite that the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence in support thereof as to persuade the court to deny the accused bond on this ground. See *R. V. Dwight Sagaray & 4 others*, 2013 eKLR, where the court stated that: -

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must also show the Court for example the existence of a threat or threats to witness; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and the witnesses among others..., at least some facts must be placed before the court otherwise it is asking the court to speculate.”

18. As indicated earlier, the probation report is not in favour of the accused person. It is indicated that the accused's family indicated that he had relocated to unknown area for five years and returned last year and his parents suspected that he was involved in criminal activities. Upon his return, he was threatening his parents with death and was heavily abusing drugs. That he threatened to kill his mother on several occasion and had physically attacked his father. His parents noted that if he is released on bail, he is unlikely to attend court and might relocate to unknown area. Further, they did not know his exact whereabouts when he was living in Nanyuki. That one of his brothers, Ketilo Lesiamito mentioned that he had also threatened to kill his wife forcing her to seek safety. Those who knew him in primary school indicated that he was welcoming and non-violent but stated that he might have changed. Those who interacted with him last year stated that he was hot tempered and non-apologetic. Community



indicated that he is a security risk and need to be rehabilitated which was supported by the area chief and the village elder. That he has no place of abode and he is flight risk.

19. In view of the foregoing, am satisfied that the Accused is a flight risk and there is all likelihood that if released on bail he is very likely fail to attend court for his trial. This is a compelling reason enough to derogate the Accused's constitutional right to bail.
20. With the result that the Accused is denied bail. He shall be remanded during the pendency of this trial, which for reason of him being in custody, shall be expedited.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER, 2025.

A.K. NDUNG'U

JUDGE

