



**Republic v Musa & 4 others (Criminal Case E055 of 2024)  
[2025] KEHC 15269 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15269 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E055 OF 2024  
AC BETT, J  
OCTOBER 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MOSES ALIAKA MUSA ..... 1<sup>ST</sup> ACCUSED**

**JOHN LUMBASI LUTA ..... 2<sup>ND</sup> ACCUSED**

**RONALD NDUNDE OTWOLI ..... 3<sup>RD</sup> ACCUSED**

**BENEA OMUSULA OMUTANYI ..... 4<sup>TH</sup> ACCUSED**

**WYCLIFFE EDWIN WEKOBA ALIAS EDWIN AMULABU ..... 5<sup>TH</sup> ACCUSED**

**RULING**

1. The Accused persons were jointly charged with three counts of murder, contrary to Section 203, as read with Section 204 of the Penal Code, one count of grievous harm, contrary to Section 234 of the Penal Code, and the offence of assault causing actual bodily harm, contrary to Section 251 of the Penal Code. In a ruling dated 14<sup>th</sup> January 2025, the 1<sup>st</sup> and 5<sup>th</sup> Accused persons were each granted bond of Kenya Shillings 800,000/= with one surety of a similar amount.
2. The application for bond by the 4<sup>th</sup> Accused was declined. The basis for the declining of bond to the 4<sup>th</sup> Accused was a pre-bail report that noted that the community is hostile and unreceptive towards the 4<sup>th</sup> Accused, who is considered a habitual offender because there are other cases pending against him. It was stated that he is regarded as a nuisance in the community, and nobody is willing to stand surety for him because he has a strained relationship with his family, resulting from his propensity for crime and the gravity of the charges facing him. The report further underscored the fact that due to the hostility by the community towards the 4<sup>th</sup> Accused person, there was fear that there would be retaliatory violence if the said Accused person was released on bond.



3. It was affirmed that the 4<sup>th</sup> Accused person has two pending criminal matters: Kakamega High Court Criminal Case number E035 of 2024, in which he is charged with murder, and Butere SPM's Criminal Case number E661 of 2024, in which he is charged with robbery with violence.
4. The court noted that, notwithstanding the fact that the 4<sup>th</sup> Accused faces multiple criminal charges before various courts, he has a constitutional right to bond because he is presumed innocent until proven guilty. The prosecution contended that the fact that the Accused was facing his third criminal charges of committing a felony means that there are sufficient grounds for the State to believe that he committed the offences and since he did not refute the prosecution's assertion that he is a habitual offender, the court was persuaded that it is possible that the assertions were factual and that there is a huge possibility that if the Accused was to be released on bond he would likely commit another offence. The court found compelling reasons for the Accused to stay in custody and denied bond pending the hearing and determination of this case.
5. In May 2025, the 4<sup>th</sup> Accused filed an application under Certificate of Urgency. He urged the court to exercise its discretion, set aside and review its earlier ruling, and grant him reasonable bail and bond terms. The application, which is dated 9<sup>th</sup> May 2025, was premised on the grounds set out on the face of the application and the supporting affidavit sworn by the Accused who averred that he had been denied his rights under *the Constitution* of Kenya and wished to have the bond terms reviewed on the grounds that he is suffering severe hardship while in custody, principally because he suffers from medical conditions that require special attention and close monitoring.
6. He pledged that he is ready and willing to comply with any reasonable condition that this Honorable court may attach to his release. He annexed to his affidavit a report from the Kakamega County General Hospital dated 27<sup>th</sup> January 2025, which indicates that he has been suffering from asthma and diabetes since 2023, and he was advised to avoid cold, dusty, and overcrowded places as this aggravates the asthmatic condition and the diabetes. He averred that his diabetic condition requires a special diet, which makes his immunity low, therefore predisposing him to other chronic infections.
7. It cannot be gainsaid that the right to bail is constitutional. It is entrenched in Article 49 (1) (h) of *the Constitution*, which provides as follows:-
  - “(1) 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.”
8. The issue before this court is whether the Accused person has met the conditions for review of the court's earlier ruling declining the Accused person's bond.
9. This court can review or vary its earlier orders by invoking its inherent jurisdiction under Article 165 (3) (a) of *the Constitution*, which confers the High Court with unlimited original jurisdiction in civil and criminal matters. This power is exercisable where new circumstances have arisen, or where new matters have been brought to the attention of the court that were not within the knowledge of an applicant when the order that is sought to be varied was granted. These new circumstances have been referred to as the changed circumstances test.



10. The principles of changed circumstances is espoused in the Judiciary Bail and Bond and Policy Guidelines paragraph 4.26 (h) which provides:-

“(h) In addition to the factors stipulated in Paragraph 4.9 above, the court should consider, as appropriate, the following additional factors in deciding whether to grant an accused person bail:

- a. The period the accused person has already spent in custody since arrest.
- b. The probable period of detention until the conclusion of the trial if the accused is not released on bail.
- c. The reason or reasons for any delay in the conclusion of the trial and any role of the accused with regard to such delay.
- d. Change of circumstances during the trial.
- e. The maximum custodial sentence in case the accused person is convicted.” [Emphasis ours].

11. In the case of Republic v Diana Suleiman Said and another [2014] KEHC 3724 (KLR), the court, while considering a renewed application for bond, held as follows:-

“11. The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.”

12. For an applicant to succeed in this application, he has to demonstrate that since the court rejected his application for bail, the compelling reasons that informed the denial of his application have changed. If the reasons that led to the denial still subsist, then his application for review must fail. In Republic v Francis Maina Wairimu v Republic [2020] KEHC 4388 (KLR), the court held that:-

“In an application for review of the denial of bail, the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”

13. It is imperative to note that the circumstances under which the court declined the 4<sup>th</sup> Accused bond have not changed. He has not adduced any evidence to show that the hostility on the ground has ceased; that the pending criminal cases that involved him have been concluded; that he has secured somebody to stand surety for him, or that his release on bond is unlikely to lead to a breach of the peace. The only grounds upon which the Accused person seeks this court’s reprieve are the grounds given in the medical report filed herein, which indicates that he has been suffering from an asthmatic and diabetic condition since 2023. I note that at the time the Accused person was arrested, arraigned in court, and



placed in custody, he had already been diagnosed with these conditions. The 4<sup>th</sup> Accused person never brought these conditions to the attention of the court at the time he was applying for bond.

14. The court cannot therefore say that there are new circumstances or new matters that have arisen since the court declined the 4<sup>th</sup> Accused person bond. In any event, it has been held in the case of Ferdinand Ndungu Waititu Babayao & 2 others v Republic [2025] KEHC 3178(KLR) that sickness does not constitute a compelling reason in an application for bail and the court rendered itself thus:-

“30. On the question of ill health, it is trite that the Applicants’ ill health does not constitute exceptional circumstances where medical facilities are available for prisoners and where the prison is well equipped to take care of the ill health of the applicants and where if need arises the prisons personnel may seek referral to other medical facilities outside the prison facility. See the cases of Dominic Karanja Vs Republic (1986) KLR 612 and Peter Mwandia Waithaka Vs Republic (2019) eKLR.”

15. In the end, I find that in so far as the 4<sup>th</sup> Accused did not dislodge the findings in the pre-bail report, the said findings still stand. Therefore, his application is not merited, and it is hereby dismissed.
16. I order that the hearing of this case be expedited since the Accused shall remain in custody until the hearing and determination of this suit or until he otherwise passes the changed circumstances test.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Mr. Mbetera holding brief for Mr. Nyaberi for the Accused

Court Assistant: Polycap

