



**Republic v Mosoko (Criminal Case E003 of 2023)  
[2025] KEHC 15135 (KLR) (Crim) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E003 OF 2023**

**K KIMONDO, J  
OCTOBER 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MARY IKOLA MOSOKO ..... ACCUSED**

**RULING**

1. The accused seeks to be “granted access to and interact with her biological children D.N.M. and A.K.M. [particulars withheld]”.
2. The notice of motion dated 17<sup>th</sup> July 2005 is thus praying for review of the conditions of bail imposed by the High Court (Kavedza J) on 29<sup>th</sup> September 2023 which prohibited access to the children. The application is fervently opposed by the Republic and the family of the victims.
3. The grounds of the motion are well set out in the applicant’s deposition of even date and a supplementary affidavit sworn on 30<sup>th</sup> September 2025. In a synopsis, the accused contends that the limitations have had “significant impact on the physical and mental health” of the children; that they have not interacted with their biological mother since August 2022; and, that their rights or welfare are of paramount importance.
4. Furthermore, the limitations were informed by the fact that D.M. who was aged 12 years was to be a state witness. Since she has now testified in the case and is not a protected witness, there is “no legitimate reason to bar the applicant from having a parental relationship with her children at this stage of the trial”. Learned counsel made extensive reference to Article 53 of the *Constitution* on the rights of every child.



5. The accused also avers that she is not a danger to the children and that no prejudice will be suffered by review of the bail terms. In the supplementary affidavit I referred to, she deposes that she has not violated the terms of her bond; that the issue of custody of the children is beyond the purview of the present motion or jurisdiction of the court; and, that she firmly believes that the family of the victim have coerced the children to state that they do not wish to have any contact with her.
6. As I stated earlier, the application is contested. The Republic relied on the deposition of Corporal George Oswe dated 29<sup>th</sup> September 2025. He avers that D.N.M. testified on 16<sup>th</sup> July 2025 and “is still undergoing counselling” while A.K.M. is now over 18 years. Furthermore, the limitation of access had nothing to do with her testimony or whether she was a protected witness.
7. The deponent adds that the accused has not come for review with clean hands because she “is a well-travelled person” and has never deposited her travel passport with the court and has thus breached the conditions of her release. As I will discuss shortly, this latter line of argument only convolutes the primary issue for decision by the court: Whether the limitation of contact with the children should be removed.
8. On the other hand is the strong opposition by the family of the victims. Firstly, A.K.M., who is now an adult, has sworn an affidavit dated 16<sup>th</sup> September 2025. She is a University student residing in a hostel and now embedded with the family of her grandmother or uncle, Thomas Mbalu Kitungu.
9. She is emphatic that she wants to have no contact with her mother. At paragraph 21 she avers as follows-

I strongly and personally oppose the accused’s application and urge the Court to consider the facts of this case, the serious nature of the criminal charges and the constitutional and emotional implications of forcing us into contact with her
10. Secondly, there is the replying affidavit of her uncle, Thomas Mbalu Kitungu, of even date as well as a further affidavit sworn on 30<sup>th</sup> September 2025. In summary, he deposes that the children “are still recovering from the trauma of their father’s death, and the accused’s own criminal trial which they have been forced to endure as secondary victims”.
11. He argues that it is not in the best interests or welfare of the children to review the bond terms. He avers that the accused has a history of violence and “parental neglect” and that it would be unreasonable to transplant the children from his family and that of their grandmother with whom they have developed strong family bonds. He has been meeting their school fees, living expenses and insurance cover. He avers that although the accused sold a property worth 12,000,000 she has not offered any financial assistance to the children.
12. In paragraphs 11 to 13, he deposes that the accused has not surrendered her passport to the court and remains a flight risk. He also claims that she had engineered a “covert plan while in custody” to remove D.N.M. from school through her sister, Brenda Mussoko. I must restate that this discourse only convolutes the primary issue for decision by the court: Whether the limitation of contact with the children should now be removed.
13. On 3<sup>rd</sup> October 2025, I heard further submissions by all learned counsel for the accused, the Republic and the victims.
14. I take the following view of the matter. The accused is charged with the murder of her husband, Martin Muthusi Mbalu (hereafter the deceased) contrary to section 203 as read with section 204 of the [Penal Code](#). The Director of Public prosecutions informs the High court that on the morning of 29<sup>th</sup> August



2022 at about 02:00 hours at Riverine estate in Kitengela town in Isinya Sub-County within Kajiado County she murdered the deceased.

15. I have heard seven witnesses so far. It bears repeating that the accused is presumed innocent at this moment. Under Article 49 (1) (h) of the Constitution, as read together with section 123 A (1) of the Criminal Procedure Code, she is entitled to bail unless there be compelling circumstances.
16. The High Court has granted the accused bond. The only issue now is whether she should be granted access to her children. The accused has attended all the virtual and physical court sessions. The overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic Court of Appeal at Nairobi, Criminal Appeal 113 of 2018 [2019] eKLR; Muraguri v Republic [1989] KLR 181.
17. To that extent I decline the invitation to inquire into whether the accused submitted her travel passport to the Deputy Registrar or whether a proper explanation was tabled. Not that it is not a material inquiry. But because it was for the prosecution to move the Deputy Registrar as appropriate at the surety hearing to ensure that the order by Kavedza J of 29<sup>th</sup> September 2023 was fully complied with. In short it falls outside the markers of the instant motion.
18. I would say the same about the heated and contested allegations whether the accused collected the travel passport for DNM from Nyayo House. Firstly, the family of the victim concedes at paragraph 13 of the further affidavit that it is the accused who had made the application for the passport as far back as 29<sup>th</sup> April 2022. Secondly, in the absence of a suitable application, I am ill-placed at this point to fully inquire into that matter. The less I say about it the better.
19. I should add that these are not custody proceedings but a murder trial. The issue is only relevant because the High Court on 26<sup>th</sup> September 2023, as it was entitled to do, gave the accused conditional bail. There were three conditions: Bail was set at Kshs 500,000 together with one surety of a similar amount; the accused was also to deposit her travel passport with the Deputy Registrar; and-

The accused is prohibited from communicating with her children by phone or making any attempt to visit them at school or at the grandmother's house. [underlining added]

20. In order to appreciate why the conditions were imposed, the following history is important. Firstly, and as I have stated, the accused is charged with the grave offence of murder. The primary victim was her husband and the father of the two children. On 29<sup>th</sup> March 2023, the High Court (Kavedza J) in a considered ruling dismissed the application for bail.
21. The accused subsequently filed an application dated 26<sup>th</sup> April 2023 seeking bail and praying for unconditional access to her home in Riverine Estate through her mother Jane Mwalimo Mwandacha Mussoko and her lawyers to secure personal documents or information necessary to prepare for her trial. Again by a considered ruling, the application was dismissed by Kavedza J on 21<sup>st</sup> July 2023.
22. The accused was aggrieved and by another application dated 8<sup>th</sup> August 2023, she now sought recusal of the judge on the ground that by declining bail, the court "had taken a position which interferes with impartiality" or that the learned judge "had a pre-determined mind on the culpability of the accused".



23. Before the motion for recusal was heard the applicant sought to withdraw it. The record shows that learned counsel for the accused, Mr. Khaminwa, addressed the trial court on 26<sup>th</sup> September 2023 as follows-

It is true that I filed an application for recusal. I swore [it] in anger and frustration and I felt she was being discriminated. I therefore wish to withdraw it.

24. On 21<sup>st</sup> September 2023, the learned Judge had allowed Prison Officers from Langata to escort the accused to her residence “to collect personal items”. Thereafter and on 26<sup>th</sup> September 2023, the learned Judge admitted the accused to bail on the terms aforementioned.

25. The application for further review must thus be seen through those lenses. The accused is seeking to plough back on one of the three conditions for her release. I stated earlier that I have now had the benefit of the evidence of seven witnesses. I must re-emphasize that that the accused is still presumed innocent. I cannot thus start to analyze or even comment on the nature or veracity of that evidence at this stage.

26. But I can safely state that the applicant is the accused person and that one of the children D.N.M. testified in this trial as PW7. I can also safely state that she testified that she was in the house on the night of the alleged murder. From the voir dire examination, she is aged 12 years. I am also alive to the fact that her testimony was delayed owing to her school calendar and was subject to a report by a counsellor that she could take to the stand.

27. It is also not contested that she is through with her evidence. It is equally true that neither of the two children is a protected witness. Fundamentally, the conditions of bail that I set out in detail were not pegged on D.N.M.’s appearance in court or whether she was a protected witness. I am fortified in that finding because the order extended to both children despite the fact that A.K.M. was not being called to the stand.

28. But considering the gravity of the charge facing the mother and all the surrounding circumstances, I readily find that it is not in the best interests of D.N.M. to be uprooted from her uncle or grandmother into the accused’s hands or to allow any such access before the conclusion of the trial.

29. Regarding A.K.M., she is now an adult university student and at liberty to choose whether to consult with her mother. I only note that in her replying affidavit, she is categorical that she wants to have no contact with the accused.

30. I have come to the conclusion that no good cause has been shown for review of the order of the court of 26<sup>th</sup> September 2023. The upshot is that the notice of motion dated 17<sup>th</sup> July 2025 is accordingly dismissed.

It is so ordered.

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

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.



Messrs Khaminwa & Khakula for the accused instructed by Khaminwa & Khaminwa Advocates & ABK Advocates LLP.

Ms. Munyoki holding brief for Mr. Musau watching brief for the victim's family and instructed by B. M. Musau & Company Advocates.

Mr. E. Ombuna, Court Assistant.

