



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. E027 OF 2024
REPUBLIC

PROSECUTOR

VERSUS

JEFFERSON MULI.....

ACCUSED

RULING

1. Jefferson Muli is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars are that on 19/10/2024 at Kisekini village Kisekini Sub - County, Kilungu Sub County with others not before the court murdered Abdul Marco Muthengi.

2. Bond was opposed when he took plea on 21/11/2024 before Hon. Mutai J at Machakos.

3. An affidavit was sworn by No. 116590 PC Jonathan Mumbe of DCI Kilungu to demonstrate that if the accused person was released on bond he would

interfere with witnesses. The officer deponed that on 30/8/2024 the accused/respondent assaulted one Thomas Muindu and there was a criminal case E476 of 2024- a witness in this murder case - the accused person/applicant also complained against the said Thomas Muindu in CR. Case E602/2024. He deponed that the life of the accused /applicant would be in danger if released.

4. The brother to the deceased one Thomas Muindu Lili swore an affidavit. He deponed that the accused is both his nephew and a nephew of the deceased as the accused's mother was their sister.
5. The deponent gives a chronology of the life of the accused person where upon the death of his mother, he and his 2 other siblings were taken in by their maternal grandmother. Their grandmother died in 2017 - and he and his brother were taken in by their sister in Mombasa after the accused was suspended from school high school - his aunt enrolled him to a Technical Training College - but he dropped out after he began stealing from there as well - long story short -

the uncle does not want the accused out on bond because the accused will put his life in danger. He has demonstrated through an annexure to the affidavit that the accused was threatening him while in custody.

6. The accused /applicant and the victims filed submission for and against the application. The applicant relies on Article 49(1) (h) of the constitution, Section 123 A of the Criminal Procedure Code. Relying on Section 106 (B) of Evidence Act, he submits that the uncle has not complied with the law in providing certificate for electronic record. He also relies on the Bail and Bond Policy guidelines which clearly demonstrate that Bond and Bail must be pegged on the right to liberty and presumption of innocence.

7. He relies on Kitui HCCR E038 of 2021, **Director of Public Prosecution Vs Tabitha Maina and Praxides Naliaka Musheshi** where the court directed that;

a) As for the 2nd accused I see no impediment to her release on bond as long as she is able to secure

an appropriate surety to ensure her attendance at the hearing.

b) The 2nd accused may be released on bond of Kshs. 500,000 with one surety of similar amount to be approved by the Deputy Registrar of this Court.

c) She shall attend the Court whenever required to do so without fail.

d) She shall not contact or intimidate, whether directly or by proxy, any of the witnesses in this case as per the witness statements and other documents that have been supplied by the state to the defence.

e) In the event that any of these conditions are violated, she is liable to have her bail cancelled and she shall proceed with the case while in custody.

8. For the Victims it is submitted that the applicant's application dated 7/2/2025 seeking to be placed on reasonable bond is opposed by the victim. Regarding the applicants counsel contention about the screen

shot messages annexed in the replying affidavit, it is submitted for the victims that Section 106B of the Evidence Act governs production of electronic evidence during trial and not as an annexure. And that the messages in the affidavit were properly in court; that there is no competent application before this Honourable court for it to consider as the applicant's application does not comply with Section 5 of the Oaths and Statutory Declarations Act Cap 15, Laws of Kenya ; that the application can be treated as a defective as it is not properly commissioned. That the affidavit is purportedly sworn at Wote by the said Jefferson Muli and commissioned before Geoffrey Mahinda a commissioner of oaths in Nyeri; that it is practically impossible for that to happen. If a document is sworn within Wote Town, the same ought to be commissioned before an advocate in Wote

9. The victims rely on **Mary Gathoni & Anor. Vs Frida Ariri Otolo & Anor(2020) eKLR** where the court quoted **CMC Motor group Ltd Vs Bengeria Arap Kori Trading as Marben School(2013) eKLR** and

struck out the affidavit which was signed in Nairobi and commissioned in Nairobi. It is submitted that the entire notice of motion application is incurably defective, should be struck out and the entire application dismissed.

10. It is pointed out that even the PACs report indicates that the accused would not be safe if he went home to Kilungu and he would be a flight risk. In addition, that the wife of the deceased was so fearful she fled the home.

11. It is submitted that the deceased was a witness in a the case where the accused was charged with assault. That he was on bond when he allegedly committed this offence.

12. It is argued that there are compelling reasons to deny the accused bond at least until the vulnerable witnesses have testified. These include the wife of the deceased, the accused's uncle, and the fact that the accused breached his previous bond terms.

13. I have carefully considered the objection to the release of the accused on bond.

14. It is not in dispute that under Article 49(1) of the Katiba there must be compelling reasons in order for the accused to be denied bond.
15. The Bail & Bond Policy guidelines provide some of the factors to be considered by the court. I have carefully considered the factors set out herein.
16. The accused person not having a fixed abode due to the hostility in the home renders him a flight risk
17. The fact that the family of the victim and some of the witnesses feel unsafe, and have demonstrated the same with evidence, and the fact that the PACs report also speaks to the safety of the accused himself if released at the moment are in my view compelling reasons to delay the release on bond of the accused person.
18. Thirdly, there is to be a further PACs report on the state on the ground or any alternative place of abode should the home in Kilungu still be unsafe.

In the circumstances the following orders issue:

1. The accused's release on bond is delayed pending the hearing of the evidence of the vulnerable

witnesses; and /or the availability of an alternative place of abode far from the victims

2. There be a further PACs report on the safety issues for the accused/ any alternative place of abode should the accused be released on bond. The report be availed within 30 days hereof.

3. Orders accordingly

Dated, signed and delivered this 22nd October 2025

Mumbua T Matheka

Judge

Chrispol - Court Assistant

Accused – present

Counsel for accused Ms Ndumbura

Counsel for victims Mr Hassan

Mr. Kazungu for state