



REPUBLIC OF KENYA



**Republic v Ochieng alias Ngunga & another (Criminal Case E040 of 2024)
[2025] KEHC 15033 (KLR) (Crim) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E040 OF 2024
AM MUTETI, J
OCTOBER 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BRIAN OCHIENG ALIAS NGUNGA 1ST ACCUSED

SILAS MBAU ALIAS MBAO 2ND ACCUSED

RULING

1. The accused persons in this case are :-
 - a. Kennedy Omondi Odour alias Guka
 - b. Clinton Njoroge Kihumba alias Dida.
 - c. Solomon Maina Kamau alias Solo
 - d. Brian Ochieng alias Ngunga
 - e. Silas Mbau alias Mbau
2. The Criminal Case No's. E007/2024, E020/2024 and E040/2024 were all consolidated on 22/7/2025 and are to be heard together.
3. However, the instant Ruling on bail is in respect of the accused persons in E040/2024 namely:-
 - a. Brian Ochieng alias Ngunga
 - b. Silas Mbau alias Mbau.



4. The matter having been consolidated with the file E007 (which had been consolidated with number E020 of 2024) this court is obligated to consider the application for bail by the two accused persons not in isolation although the circumstances of the accused persons may be unique.
5. The applicants have anchored their bail application on the provisions of Article 49 (1) (h) of *the constitution*.
6. The two have argued that their right to bail can only be limited if there are compelling reasons to do so.
7. The two accused persons have urged this court to consider them as being fit for admission to bail and that they are not a flight risk.
8. The accused persons further pleaded with the court to consider that prior to the arrest they were free men for about 6 months since the date of the incident up to the time of arrest and that they did not go into hiding at all.
9. According to them they all along lived in the usual place of abode at Korogocho that were arrested in Dandora.
10. The state opposed the release on bail citing the security of witnesses as a compelling reason.
11. In particular a witness by the name John Ogutu who was present during the hearing of the application for bail was said to be apprehensive and that if the two accused persons were to be released on bail his life would be in danger.

Analysis and Determination

12. The right to bill is constitutionally guaranteed and can only be limited if there are no compelling reasons to do so.
13. The state has urged the court to consider the issue of security of prosecution witnesses and deny bail.
14. The court has a duty to ensure that the interests of justice are not compromised. A fair trial demands that the rights of accused persons be respected under Article 50 of *the Constitution*.
15. However, the fair trial right of an accused which includes the right to bail must be carefully balanced against the victims interests and justice concerns.
16. It would defeat the interests of justice if accused persons were to be released on bail under circumstances where victims of the crime feel threatened and or are likely to be intimidated to forebear them from testifying.
17. The security of victims of crime and witnesses is a primary concern to justice sector.
18. The courts must remain vigilant in ensuring that victims concerns and witnesses are addressed in the course of a trial. See Joseph Lendrix Waswa Vs. Republic (Petition No. 23 of 2019) [2020] KESC 23 (KLR) ; Michael Juma Oyamo & Another Vs. Republic (2019) eKLR.
19. The prosecution informed this court that a witness by the name John Ogutu and others were concerned about their safety should the accused persons be released on bail. Indeed, Joseph Ogutu was said to have been a survivor of the attack during which the deceased died.
20. It is thus clear to this court that there are valid concerns about safety of witnesses and in furtherance of the interest of justice under Article 159 of *the Constitution* this court finds that the two accused persons are not fit for release on bail at the stage.



21. Although they argue that during the six months prior to the arrest they had the opportunity to harm witnesses but did not do so this court is cognizant of the fact that during that. They were free men and had absolutely no reason to harm the witness since they had not been charged.
22. The two are now accused persons thus the ground has shifted and they now have reason to be concerned with the witnesses.
23. The apprehension by the prosecutor is thus not far -fetched and the court is minded to find and hold that the prosecution have established on a balance of probabilities that the likelihood of interference with witnesses is real and therefore this court finds that there is a compelling reason to deny the two accused persons bail.
24. The security of witnesses is of paramount importance because any interference with witnesses would be prejudicial to the justice of the case. The court must guard against any possibility of interference with witnesses in order to safeguard the interests of justice.
25. It would be remiss of me to fail to mention that in the ruling of 29th October 2024 by the Honourable Justice K. Kimondo in CRC No. E007 of 2024 consolidated with E020/2024 the learned judge did for the same reason decline to grant bail to the co-accused.
26. The trial is one and the witnesses are the same, thus in promoting judicial harmony in decision making, this court declines to grant bail to the two accused even though they continue to enjoy the presumption of innocence under Article 50 of *the Constitution*.
27. The trial of the five accused persons shall be fast tracked to ensure that their fair trial rights are not trampled upon.
28. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF OCTOBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Ms Njoroge for the state

Kiio for Accused

Accused: All present

