



**Republic v Gachuru alias Mariko (Criminal Case E017 of 2025)
[2025] KEHC 16572 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E017 OF 2025
LN MUTENDE, J
NOVEMBER 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL MATHAI GACHURU ALIAS MARIKO ACCUSED

RULING

1. Michael Mathai Gachuru alias Mariko, the Accused, is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence being that on 24 day of August, 2025 at around 2000hrs in Ndaragwa Township within Kahutha Location in Nyandarua North Sub-County, he murdered Mary Wangari Mathenge.
2. Having denied the information presented by the Director of Public Prosecutions, the Accused seeks to be released on bail pending trial, an application that is opposed by the State through No. 81329 Sergeant. David Otero who depones that the police received a report of murder/arson/attempted suicide. And on moving to the scene they found an irritated mob of about 150 people armed with crude weapons trying to break into the dwelling house which was on fire with the victim and alleged perpetrator inside.
3. That the police managed to break the door to the house and rescued the Accused from the mob and escorted him to Makutano Police Post. It was established that the Accused who cohabited with the victim since 2023 disagreed and the victim moved out then rented a house which was the scene of the incident. Following the incident members of public proceeded to his residence and also set it ablaze.
4. That intelligence report reveals that the locals are still hostile and if released, the Accused will be exposed to imminent danger. That the Accused has no fixed place of abode having divorced his legal wife in 2010 before meeting the deceased. That he has no relatives hence he is a flight risk and has a likelihood of interfering with witnesses who are vulnerable and they share the same locality.



5. The Accused through learned counsel Mr. Mugo invites court to consider releasing the Accused on reasonable terms as provided by Article 49(1)(h) of *the Constitution*.
6. Pursuant to the law, a social inquiry was carried out which established that the accused a 57 years old man and casual labourer divorced his first wife with whom they had two children. His second wife divorced him after cohabiting with him for one year. The wife and victim did not have children with him but had three sons from a previous marriage. The Accused is stated to have no known friends and is a recluse in the village.
7. The community views are represented by the local chief, Mr. Cyrus Wachuka Njue who states that the community view the Accused as a dangerous individual who was involved in occult practices calling himself Jehovah Mariko. That he was engaged in weird practices, such that his presence in the village is viewed as a threat to safety and moral order and his safety cannot be guaranteed.
8. I have considered rival submissions. The Accused's right to bail pending trial is guaranteed by *the Constitution* and can only be limited where there is existence of compelling rights requiring his/her incarceration.
9. Article 49(1) (h) of *the Constitution* provides that;
 - (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.
10. Compelling reasons are neither defined by *the Constitution* nor Statute but through case law such reasons are stated to be persuasive, convincing or forceful grounds that are proved beyond reasonable doubt. In Republic v Joktan Maende & 3 Others [2012] KEHC 5551 (KLR) the court held that;

“ The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by *the Constitution*.”
11. The Judiciary Bail and Bond Policy Guidelines, 2015, pg. 25 sets applicable procedure to the question of bail. It provides for circumstances under which an Accused may be denied bail thus;

“The following procedures should apply to the bail hearing:

 - a. The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or



- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e. That the accused person is likely to interfere with witnesses or evidence; or
- f. That the accused person is likely to endanger national security; or
- g. That it is in the public interest to detain the accused person in custody.”

12. Section 123 A of the Criminal Procedure Code provides;

- (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) The nature or seriousness of the offence;
 - (b) The character, antecedents, associations and community ties of the accused person;
 - (c) The defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - (d) The strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - a. Has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - b. Should be kept in custody for his own protection

13. The right to be released on bail pending trial is a constitutional right which can only be denied or limited where the prosecution proves existence of compelling reasons. Which is defined as one that is convincing, persuasive or forceful and the court should find that bail should only be denied in the wider interest of justice.

14. Granting bail is a discretionary exercise of the trial court and is determined under the provisions of Section 123 of the Criminal Procedure code and the Bail Bond Policy guidelines which set out the list of compelling reasons. The main aim of granting bail is to enable the accused attend his trial, thus the consideration is always whether the accused, if released will be able to turn up for trial or whether he would abscond and frustrate the entire proceedings .

15. In *Ng'ang'a v Republic* 1985 KLR 451, Chesoni J, (as he then was) stated thus:

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

The accused will fail to turn up at his trial or to surrender to custody; The accused may commit further offences; or He or she will obstruct the course of justice”



16. On the question whether the Accused is a flight risk, the principle is that the discretion of granting bail should be liberal and should only be denied where the circumstances show that the accused chances of absconding are higher than his chances of complying and turning up for trial. The Accused has not submitted on the issue whether or not he will turn up for trial.
17. As to whether the accused is likely to interfere with witnesses, the prosecution has alleged without proof of the fact of interference and/or intimidation as they have not identified the alleged witnesses by name. The prosecution had a duty to point out particular witnesses who would face the perceived threat. But, on whether the Accused is a flight risk, it is stated that he has no fixed abode. Averments by the Investigation Officer were not refuted. There is nothing to confirm his identification, employment, conduct of business, assets or family relations, this diminishes the chances of tracing him if released on bond.
18. In the upshot, the prosecution has put forward forceful and /or convincing reasons requiring the Accused person being denied bail. Accordingly, the application for bail is dismissed.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF NOVEMBER, 2025.

.....

L.N. MUTENDE
JUDGE

