



REPUBLIC OF KENYA



**Republic v Kathure (Criminal Case E067 of 2025)
[2025] KEHC 16576 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E067 OF 2025
HM NYAGA, J
NOVEMBER 12, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

AGNES KATHURE ACCUSED

RULING

1. The accused is charged with the offence of Murder, contrary to Section 203 as read with Section 204 of the Penal Code.
2. The accused denied the charge against her.
3. The state has opposed the grant of bond bail to the accused. Through an affidavit sworn by PC. Geoffrey Kamau, the Investigating Officer, the state has set out the following grounds: -
 - a. That the accused was arrested ad arraigned before the Chief Magistrate’s court at Maua, vide Misc. Criminal Application No. E021 of 2025.
 - b. That the accused was released by the court and asked to report to the police.
 - c. That subsequently the accused was issued with a notice to compel attendance under Section 52 of the *akn ke act 2011 11A National Police Service Act*, but failed to honour the summons, and eventually, switched off her phone.
 - d. That the accused remained at large until 17 10 2025 when the Investigating officer pumped into her and then arrested her.
 - e. That for the foregoing reasons, the accused is a flight risk.
 - f. That she has no fixed abode and is likely to interfere with key witnesses.



4. The accused was opposed to the application to deny her bond bail. Through her advocate, she stated that she was not aware of any notice to compel her to go to the Investigating Officer.
5. That she never absconded and even has a business near the police station. It was further stated that she is a single mother and that her children were left under the care of her neighbor.
6. The court called for a pre-bond Bail report which was filed. I will address it shortly.
7. Article 49 of *akn ke act 2010 constitution the Constitution* provides for the rights of an arrested person. Article 49(1) (h) of thereof specifically states that an accused person is entitled;

“To be released on bond or bail on reasonable conditions pending a charge at a trial unless there are compelling reasons not to be released.”
8. *akn ke act 2010 constitution The Constitution* does not define what constitutes “compelling reasons”. However, Section 123A of the Criminal Procedure Code gives a guide on some of the factors that are to be considered. It provides;
 - “(1) Subject to Article 49(1)(h) of *akn ke act 2010 constitution 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 offences;
 - b. the character, antecedents, associations and community ties of the accused persons;
 - c. the defendant’s record in respect of the fulfilment 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.”
9. Also, in the well-known case of Republic -versus- Danson Mugunya [2010] eKLR the court cited some of the grounds to be considered in determining whether to grant bond or bail to an accused. These include:
 - a. The nature of charge or offence and the punishment to be meted out if accused is convicted.
 - b. The strength of the prosecution case.
 - c. Character and antecedents of the accused.
 - d. The need to protect the victim or victims of the crime.
 - e. Likelihood of interfering with witnesses.
 - f. The relationship between the accused and potential witnesses.



- g. Whether the accused is a flight risk or not.
- h. Protections of the accused person.
10. This list is not exhaustive and each case has to be looked at on its own set of circumstances. It is for the State to provide these compelling reasons and not for the accused to disprove them.
11. In Republic –versus- Robert Zippor Nzilu [2018] eKLR the court held that compelling reasons are dependent on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. As regards the severity of an offence, the court held in this case that the mere fact that the offence with which an accused is charged carries a severe sentence is not necessarily a reason for denial of bail. The court reiterated that the burden of proof lies on the prosecution to show that there are compelling reasons to deny an accused person bail bond.
12. In Republic –versus- Danford Kabage Mwangi [2016] eKLR the High Court held that the grounds of denial of a bail application must be proved by the prosecution to the satisfaction of the court. The court stressed that mere allegations or possibility is not enough. The court also held that bail cannot be denied simply because an accused has been charged with a serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the grounds for refusing bail exists.
13. Needless to reiterate, the burden is on the state to prove these compelling reasons.
14. The probation Officer was able to peruse the court file in Maua Chief Magistrates Court Case No. E021 of 2025. He established that the file was closed as the matter was settled. The report thus counters what the Investigating Officer has deponed, that the accused was ordered to report to the police.
15. The same report shows that the accused was ever present at Mutuati Market, running her grocery stand. That she was not able to return to her home as the deceased’s family had taken over his property.
16. The victim’s family were characteristically, opposed to the grant of bond bail.
17. I have considered the matter and I am of the view that it really cannot be said with certainty that accused absconded. Why would she still hang around the area where she was arrested, if that was the case?
18. I also find that there was no notice attached to the affidavit to prove that the accused had been made aware of the time or date to report to the police.
19. Denial of bond to an accused person, although allowed by *akn ke act 2010 constitution the Constitution*, should be in clear cases where compelling reasons have been preferred by the state.
20. In that instant case, I find no such reasons.
21. In such circumstances, I grant the accused a bond of Kshs. 200,000 = with a surety of similar amount.

SIGNED, DATED AND DELIVERED AT MERU THIS 12TH DAY OF NOVEMBER, 2025.

H. M. NYAGA

JUDGE

