

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL CASE NO. E031OF 2025

REPUBLIC.....PROSECUTION
VERSUS

JOEL ORIEDO.....1ST ACCUSED
ALEX SIMWA MAHELI(ALIAS PETER WAINAINA).....2ND ACCUSED
FRANCIS MUKONYO WANJOHI.....3RD ACCUSED
ANTHONY KIMANI MUCHIRI.....4TH ACCUSED

RULING ON BOND

1. The Four accused persons were all jointly with offense of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offense is that on 21st May, 2025 at Elimu primary school area in Nakuru East Sub-County within Nakuru County, Murdered Hannah Waithera Muthee.
2. They all pleaded not guilty to the charge when the charge was read to them on 25th June, 2025 and on 3rd July, 2025, Corporal Richard Kipsang who is the Investigating Officer in this matter, swore an Affidavit opposing their release on bail or bond on the grounds that:-

- 1. The offense of murder is serious and carries a severe punishment if the accused are found guilty and thus can be an incentive to abscond.***
- 2. The accused persons do not have a known permanent residence where they can be traced, making them a flight risk.***
- 3. There are other suspects in the case who are still at large.***
- 4. Some key witnesses have expressed fear to testify while the accused are out on bond.***

3. He therefore stated that the release of the three accused persons pose a high risk of them interfering with witnesses, which could cause harm to the case. For

that reason, he states that it is in the interest of justice that witness testimony be taken before the issue of bail is considered.

4. In response, the 1st accused swore the Replying Affidavit on 11th July, 2025 stating that there are no compelling reasons to deny him his right to bail under Article 49 of the Constitution.
5. He termed the Prosecution's application to deny him bond a nonstarter, frivolous, and an abuse of the court process. While he acknowledges the seriousness of the murder charge, he contends that this fact alone is not sufficient reason to deny bail.
6. He refuted the claim that he had no permanent residence, stating that he resides in Kaptembwa area in Nakuru, which is a fixed abode he has lived in for years and denied being a flight risk saying that he has cooperated with the investigating agency, has no valid passport or travel documents, and has strong family ties within Nakuru County as a husband and a father to two minors who depend on him.
7. He stated that he does not know any of the witnesses and therefore cannot interfere with them.
8. While pleading with the court to grant him bail on reasonable terms, he stated that his incarceration is causing him psychological and physical damage. He promised to abide by any conditions imposed by the court.

3rd Accused's response

9. He filed a Replying Affidavit sworn on 18th July, 2025, stating that he is a Kenyan citizen with a fixed place of abode being a residence at Shabab estate in Nakuru, where he lives with his mother.
10. He deponed that he supports his two young children as the sole breadwinner and has no intention of fleeing the court's jurisdiction. He asserted that he is not a flight risk and that he works as a nail technician and a part-time taxi driver, and that he is actively involved in his church and community. He believes that

members of his church and community are willing to vouch for his conduct and stability. He further stated that he has no past criminal record.

11. He denied knowing any of the witnesses listed by the prosecution and added that he has never contacted or intimidated any witness and is willing to comply with any court-imposed restrictions to ensure witnesses are protected. Further, he stated that he is not associated with alleged prosecution witnesses and their absence should not be held against him.
12. He argued that the Prosecution's objections to his right to bail do not meet the compelling reasons threshold required to deny his liberty. He stated that he is willing to surrender travel documents, deposit cash bail, and report to the police as directed by the court.
13. In conclusion, he deponed that detaining him would place an unfair and disproportionate burden on his family, especially his young children.
14. The 2nd and 4th accused did not challenge the affidavit seeking to deny them bail.

Prosecution submissions

15. The Prosecution Counsel, James Kihara, maintained the prosecution's arguments opposing the granting of bond to the four accused persons. He acknowledged that Article 49(1)(h) of the Kenyan Constitution guarantees the right of an accused person to be released on bond or bail unless there are compelling reasons to deny this right.
16. Further, he appreciated that the burden is on the prosecution to establish the existence of compelling reasons with cogent, very strong and specific evidence as defined in the case of ***Republic vs Joseph Thiongo Waweru & 17 Others [2017] eKLR.***
17. On allegation of being flight risk, the prosecution asserted that the accused have not disclosed their places of residence or provided any documents to confirm their address.

18. He submitted that while the accused have stated that they do not possess passports, he submitted that being a flight risk can mean becoming a fugitive even within the country's boundaries. Further that the accused have failed to provide a detailed description of their fixed abode and have not assured the court how they can be traced. He further submitted that the 2nd accused, who claimed to be a college student, did not provide any documentation to confirm this.
19. On the issue of the accused persons likely to interfere with witnesses, it was submitted that the prosecution was concerned of a probability that the witnesses may face intimidation or threats, which could compromise the quality of the hearing.
20. It was therefore submitted that the security of several civilian witnesses will be at risk if the accused are released as the accused persons used covert means to commit the crime and came into contact with some witnesses. Based on the foregoing, the prosecution argued that bond terms be reviewed at a later stage, after key civilian witnesses have testified.
21. It was further submitted that the failure of witnesses to swear affidavits is not fatal to the prosecution's opposition to bond.
22. On gravity of the offence, it was emphasised that the offence carries a potential death penalty and given the overwhelming evidence, the accused are likely to abscond or interfere with witnesses to subvert the trial process.
23. The prosecution suggested that a probation report be requested to objectively assess the suitability of the accused to be released back into society, focusing on their character and the likelihood of them harming others.

1st Accused's submissions

24. Relying on the right to bail under Article 49(1)(h) of the constitution and Article 50 of the Constitution on the presumption of innocence until the contrary is proven, it was submitted the burden of proving that compelling reasons exist to deny bail falls on the prosecution.

25. He submitted that principle under Article 50(2) suggests that pre-trial detention should not be a form of punishment and that accused persons should be released on bond or bail whenever possible.
26. While relying on the Kenya Judiciary's Bail and Bond Policy Guidelines of 2015, it was submitted that the prosecution must demonstrate on a balance of probabilities, compelling reasons for denying bail and which include that the accused person ;- is likely to fail to attend court proceedings; is likely to commit or aid in the commission of a serious offense; is likely to endanger the safety of victims, individuals, or the public; is likely to interfere with witnesses or evidence; is likely to endanger national security and; when it is in the public interest to detain the accused person.
27. To support of the above argument, , reliance was placed in the case of **Republic vs. John Kahindi Karisa & 2 Others [2010] eKLR**, where the court noted that with the new Constitution, offenses like murder, which previously were non-bailable, are now bailable. That this is an inalienable right that can only be restricted if there are compelling reasons.
28. The 1st accused maintained that he has a known and fixed abode in the Kaptembwa area of Nakuru for years and that living in rental housing does not equate to having no fixed abode, as this would unfairly affect most urban residents.
29. He submitted that the Investigating Officer failed to provide any credible evidence to support the claim that the 1st accused will interfere with witnesses. He maintained the averments in his Replying Affidavit that he does not know any of the Prosecution's witnesses, making interference implausible. He argued that bare assertions of threats without convincing evidence do not constitute compelling reasons to deny bail.
30. Regarding the strength of the prosecution's case, it was submitted that it is premature to assess the evidence at this stage, as no witnesses have testified. In support, he relied on the case of **Republic vs. Danson Mgunya & Another**

[2010] eKLR, which held that the strength of the evidence should not be a criterion for denying bail unless there are exceptional circumstances, such as being caught red-handed or having a lawfully admitted confession.

31. It was also submitted that there have been no adverse allegations about his character or previous record of fulfilling bail terms. He therefore proposed a set of reasonable bail conditions to mitigate any potential risks, including a cash bail or surety, monthly reporting to the police, and a prohibition on contacting prosecution witnesses or leaving the court's jurisdiction without permission.
32. In conclusion, it was maintained that the Prosecution failed to provide compelling reasons to deny him the constitutional right to bail and that less restrictive measures can achieve the same objective of ensuring a fair trial. He added that the primary consideration for granting bail is whether the accused will appear for trial. He urged the court to impose conditions that ensure attendance.

3rd Accused's submissions

33. In his separate submissions, he submitted on his rights under Article 49(1) (h) and 50(2)(a) of the Constitution and submitted that the burden of proving compelling reasons to deny him bond falls on the prosecution and that these reasons must be grounded on facts, not speculation.
34. On the Prosecution's claims that he is a flight risk, he submitted that that he lives in Shabab Estate, Nakuru, with his mother, and is the father of two children. Further that he is a nail technician and part-time taxi driver and is actively involved in community activities. He dismissed the idea that living in a rental home constitutes having no fixed abode, noting that no evidence has been presented to show he frequently changes residences.
35. On the claim that he is likely to interfere with witnesses, he submitted that the Investigating Officer failed to provide any credible evidence, such as affidavits from witnesses. He maintained that he did not know any of the witnesses. He committed to avoiding contact with them.

36. He further submitted that claim of other suspects being at large is not a valid reason to deny bail, as each accused person must be considered individually.

37. In conclusion, he submitted that the Prosecution failed to demonstrate compelling reasons for his continued detention. Further, he submitted that being a first-time offender with strong community and family ties, he is willing to comply with bail conditions.

38. He proposed reasonable bail terms, including cash bail, monthly reporting to the police, surrendering travel documents, and a commitment to not contact witnesses or leave the court's jurisdiction, arguing that the ultimate objective of bail, is to ensure an accused attends trial which can be achieved through these conditions.

Determination

39. Having heard the parties on the affidavits and submissions together with case law cited, it is clear that the parties are well versed with the Statutory and Constitutional provisions including Article 49 of the Constitution on the right to bail unless there are compelling reasons to deny an accused person bond. Further, they aptly capture on an accused person's right to a fair trial which includes presumption of his innocence until proved guilty.

40. These are further emphasised and explained in the Judiciary Bail and Bond policy guidelines, 2015 particularly Paragraph 4.9 thereof on compelling reasons to deny bond being:-

a) The nature and seriousness of the offense: The court may assume a higher incentive for the accused to abscond if the charge is serious and the potential punishment is severe.

b) The strength of the prosecution's case: If the evidence against the accused is strong, particularly after prosecution witnesses have testified, it may be justifiable to deny bail as there is a greater incentive for the accused to abscond. Conversely, if the evidence is tenuous, pretrial detention is generally not warranted.

- c) *Character and antecedents of the accused person: While these factors alone do not justify a denial of bail, they can contribute to a refusal when coupled with other adverse factors.*
- d) *Failure to observe previous bail/bond terms: If the accused has previously failed to comply with bail or bond conditions, this is a valid reason to deny future applications.*
- e) *Likelihood of interfering with witnesses: If there is a strong, un rebutted likelihood that the accused will interfere with witnesses, bail may be denied, especially if the court cannot impose conditions to prevent such interference. This is particularly relevant in cases of defilement or murder where witnesses are closely related to the accused.*
- f) *The need to protect the victim(s): Pretrial detention may be necessary to protect the victim(s) from the accused.*
- g) *The relationship between the accused and potential witnesses: If the accused is related to or in a position of influence over potential witnesses, there is a legitimate concern about the impact on the witnesses. While this doesn't automatically mean bail should be denied, it may require the court to impose specific conditions to prevent interference.*
- h) *Child offenders: The denial of bail or bond for a minor is generally not considered to be in the best interests of the child.*
- i) *The accused person is a flight risk: A foreigner without a fixed abode or hosts in Kenya may be presumed to be a flight risk, particularly if there is no extradition treaty with their home country.*
- j) *Whether the accused is gainfully employed: Being gainfully employed can enhance the likelihood that an accused person will attend trial. However, the type of employment (e.g., casual laborer) should not, in itself, be a basis for granting or denying bail.*

k) Public order, peace, or security: Pretrial detention may be necessary to preserve public order if there is evidence that the accused's release would likely lead to a public disturbance.

l) Protection of the accused person: Pretrial detention can be necessary to protect the accused person themselves.

41. It is a fact that the burden lies on the Prosecution to prove the existence of the compelling reasons. It is noted that the 2nd and 4th accused did not challenge the Affidavit seeking to deny them bail leaving the court to decide on the material presented herein. That notwithstanding, the burden still lies on the prosecution to persuade the Court to deny the accused persons their constitutional right to bail.

42. The Prosecution's primary concerns in support of opposition to bond are that the accused persons are a flight risk due to a lack of a permanent address, and that they may interfere with civilian witnesses who are known to them and have expressed fear of intimidation.

43. On the issue of the accused persons lack of permanent residence or place of abode, the 1st and 3rd accused stated they reside in Kaptembwa and Shabab, respectively.

44. This Court takes judicial notice that very few people in this country own the houses they live in. A rental house cannot be termed as permanent residence. To argue the issue of bond along those parameters would cause discrimination against majority of the accused persons.

45. Regarding interference with witnesses, the 1st and 3rd accused claimed they do not know the witnesses listed in the information sheet. The Prosecution, however, asserted that the witnesses are known to the accused and have expressed safety concerns should the accused be released on bond.

46. In most cases, some witnesses are known to the accused person or persons accused of committing an offence. It is therefore not sufficient for the Prosecution to boldly state that the witnesses are known to the accused

persons herein and therefore, they may face intimidation or threats. That apprehension should be backed by some material particulars which are lacking in this case.

47. Further, the fact that some suspects are still at large cannot be a sufficient ground for opposing bond in the circumstances stated herein. To hold these four accused persons in remand waiting arrest of other suspects may not be sound. The question that would now arise is when the alleged suspect would ever be arrested.

48. Though the offence of murder is a serious one, there is no sufficient material to demonstrate compelling reasons to deny these four accused persons bond.

49. In conclusion, this Court makes the following orders:-

- 1. The Prosecution's objection vide Affidavit dated 3rd July, 2025 in regard to these four accused persons be and is hereby dismissed.**
- 2. Each of the accused persons is released on a bond of Kenya Shillings Seven Hundred Thousand (Kshs. 700,000/=) with a surety of similar amount.**

Dated, signed and delivered at Nakuru this 11th Day of November , 2025.

PATRICIA GICHOHI
JUDGE

In the presence of:

Mr. Kihara for the State

Mr. Ouma for 1st Accused

Ms Kinya and Mr. Wesonga for for 2nd Accused

Ms Chebet for 3rd Accused

Mr. Oanga for 4th Accused

All the Accused persons

Kamau - Court Assistant

ORIGINAL