



**Republic v Wanyonyi & 2 others (Criminal Case E007 of 2025)
[2025] KEHC 16073 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE E007 OF 2025
DKN MAGARE, J
NOVEMBER 10, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ISMAEL WANJALA WANYONYI 1ST ACCUSED

DAVID KIPROTICH KETER 2ND ACCUSED

BILTON GATHERU MAINA 3RD ACCUSED

RULING

1. This is a ruling on bond. The 3rd Accused person’s application was orally made in court on 6.05.2025. Bond ruling for the 2nd accused, who was the original accused in this matter had already been made.
2. The 3rd Accused person is facing the charge of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence were stated in the information dated 18.03.2025, that on 5.10.2024 at Ndimaini village, Gakuyu sublocation, Konyu Location, in Mathira East Sub-county within Nyeri County within the Republic of Kenya, jointly murdered Rosalid Wamuyu Maina.
3. In response to the application for bail, the Investigating Officer filed an affidavit sworn on 18.03.2025 opposing the bail on the following grounds:
 - a. The deceased was a close neighbor to the Applicant.
 - b. To safeguard security of the accused as the ground is very hostile.
 - c. The accused is a high flight risk having attempted to escape from custody during the arrest.
 - d. There is likelihood of interference with witnesses.



4. The state submitted that the witnesses were children of the deceased. However, the accused through their advocate submitted that the statements by the children do not touch on the 3rd accused. This was not rebutted.
5. The state further submitted that the ground is hostile to the 3rd accused. The court directed the probation and after care services to prepare a pre-bail report which was duly filed. The report was positive. When both parties were invited to comment, they agreed that the report is positive. The prosecution nevertheless, invited me to rely on the investigating officer's affidavit. In effect, I was implored to ignore the PACS report.

Analysis

6. The issue is whether the accused person herein should be released on bail pending trial. This is a constitutional imperative provided under Article 49(1)(h) of *the constitution* as follows:

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.

7. This is buttressed under Section 123(3) of the Criminal Procedure Code as follows:

“The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”

8. The considerations for bail and bond are set out in Section 123A of the Criminal Procedure Code as follows:

“(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 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;

9. The seriousness of the offence does not ipso facto cause denial of bond. This means any offence, from treason, murder, or robbery with violence. Terrorism is bailable. No offence is excluded, it is simply one of the considerations, which mostly goes to the quantum of the amount of bond. I therefore dismiss as idle the quest by the state simply because of the sentence that may ultimately be meted out. In the



case of *Mohamood Chute Wote & 2 others v Republic* [2021] eKLR Nzioka, J expressed herself on Article 49(1)(h) and section 123 of the Criminal Procedure Code as follows;

“The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of *the Constitution* of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.”

10. The state is not a harmless lamb that can be rail loaded with falsehoods. It must be noted, that where there are compelling reasons it must surely know the same. In the case of *Thomas Patrick Gilbert Cholmondeley v Republic* [2008] KECA 319 (KLR), the court of appeal [R.S.C. Omolo, E. O. O’Kubasu and J. W. Onyango Otieno] addressed the relationship between the state and a criminal defendant as follows:

We would repeat these sentiments here to emphasize the point that the courts in the country in spite of their perceived previous failures, must now rigorously enforce and enforce against the state the fundamental rights and freedoms of the individual guaranteed by *the Constitution*. Those rights cannot and must not be allowed to be diluted by purported exercise of inherent powers by judicial officers allowing the state to claim reciprocal privileges. The state is the usual and obvious violator against whom protection is provided in *the Constitution* and it ought not to be allowed to claim the same privileges. We know the good Book says that in the end of times, the lion shall graze and lie peaceably together with the lamb. But our recent history is still too fresh in our mind and we in the courts must try to keep the lion away from the lamb. In other words there is not and there can be no question of reciprocal rights, or a level playing field or any such theory as between an accused person and the state. No statute gives the state such privileges, and *the Constitution*, wisely in our view, does not give the prosecutors such powers. They cannot be given through the inherent power of the court.

11. The court must disabuse the state that the accused is guilty of murder. He is charged with murder. He is presumed innocent until the court finds otherwise. Most oft quoted English decision of by Viscount Sankey L.C in the case of *H.L. (E) Woolmington vs. DPP* [1935] A.C 462 pp 481, comes in handy in describing the legal burden of proof in criminal matters, that;

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

12. The seriousness of the offence charged is important as regards the safeguards and motivations to escape. It is not a primary consideration. It must not be forgotten that persons charged with simple assaults have been convicted while those charged with murder acquitted. A person should therefore not be



denied bond only because the offence he is facing is a serious one, but because there are compelling reasons not to be released. In other words, an accused has a right to be released on bond unless, due to compelling factors, he will be forced not to be released. Where there is doubt, either way, the benefit must be given to the accused.

13. Further, at Paragraph 3.1(d) of the Bail and Bond Policy Guidelines (at page 9) it is provided that:

“d) ...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case.”

14. The Prosecution’s case is that the accused person is a father to three minors who are witnesses. The evidence from both sides is that the children do not implicate the accused. He is also estranged with the mother. This means, that there is no compelling reason to harm the children who are his family, whose mother was not opposed to bond. The court must thus balance the interest of releasing the accused on bond and interests of justice. The sentencing policy guidelines provide as follows:

- b. Every accused person has the right to liberty. As a general rule, therefore, every accused person should not be detained, but should be released subject to his/her guarantee to appear for trial. Pretrial detention should therefore be a measure of last resort, and the criminal justice institutions should make every reasonable effort to avoid pretrial detention.
- e. On the one hand, police officers and judicial officers should endeavor to preserve the liberty of an accused person, who is presumed to be innocent and should be allowed to keep the fabric of his or her life intact by, for example, maintaining employment and family and community ties. Preserving the liberty of an accused person also permits him or her to take an active part in the planning of his or her defense. On the other hand, the state has a duty to prosecute those who commit crimes, which may entail qualifying the individual right to liberty. The state has a duty to ensure public safety between the time of arrest and trial of accused persons, and a duty to protect the integrity of the criminal justice system. This means that where there is convincing evidence that an accused person may undermine the integrity of the criminal justice system, by, for example, intimidating witnesses or interfering with the evidence, then a need arises to either deny such a person bail or bond, or set stringent bail or bond terms. equally, where there is convincing evidence that the accused person will endanger a particular individual (for example, victims of the crime) or the public at large, or even commit a serious crime, it also becomes necessary to subject an accused person to pretrial detention. The interests of justice therefore demand the protection of the investigation and prosecution process against probable hindrance by accused persons. It is therefore important for police officers and judicial officers to appreciate that the public have an interest in the effective prosecution of offences. In appreciating the need to balance the rights of accused persons with the interests of justice,



the Constitution states that an accused person can only be denied bail or bond where the court establishes that there are compelling reasons not to be released. That is, while *the constitution* stipulates that every accused person is presumptively entitled to bail or bond, it permits the denial of bail or bond where the prosecution presents convincing evidence to justify such denial. In denying an accused person bail or bond, it must therefore be demonstrated with convincing evidence that his or her release will present risks, and that such risks cannot be managed, even with the attachment of appropriate conditions.

15. The duty of the court is not to ignore risks. It is to ensure that the risks can be managed. Only where the risks cannot be managed will the court find that there are compelling reasons to detain the accused.

16. The right to reasonable bail and bond terms is underpinned in the Judiciary's Bail and Bond Policy Guidelines as follows:

Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

17. In my view, justice in bail applications also denotes justice to the accused person and justice to the victim of crime served if both parties, that is, the victim and the accused get justice. It is a two-way traffic. Like to the accused person, the way to the victim's justice is through a fair hearing and fair trial where witnesses are enabled to attend court to freely testify on the truth of what they know, saw, or heard.

18. Accordingly, I find that there are no compelling reasons not to admit the third accused person to bond pending trial. A sum of Ksh 500,000/= seems sufficient as bond for the 3rd accused with a Kenyan surety of similar amount.

Determination

19. I therefore make the following orders: -

- a. The application for bail pending trial is merited and therefore allowed.
- b. The 3rd accused, Bilton Gatheru Maina is admitted to bond of a sum of Kshs. 500,000/= with a Kenyan surety of similar amount.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 10TH DAY OF NOVEMBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Kimani for the State

Mr. Muchangi for the 1st Accused

Ms. Wachira for the 2nd Accused

Mr. Njuguna Kimani for the 3rd Accused

Court Assistant – Michael

M. D. KIZITO, J.

