



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kariuki & another (Criminal Case E028 of 2025)
[2025] KEHC 15639 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E028 OF 2025
PN GICHOHI, J
NOVEMBER 4, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GODFREY KARIUKI 1ST ACCUSED

SAMUEL NGUGI CHEGE 2ND ACCUSED

RULING

1. Godfrey Kariuki and Samuel Ngugi Chege (herein referred to as the 1st and 2nd Accused respectively) are charged with offense of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that jointly with others not before court, they murdered Alvin Kipchumba on 10th day of June 2025 at Maili Kumi , Bahati area in Nakuru North Sub-County with Nakuru County, a charge they pleaded not guilty to on 30th June, 2025.
2. On the same day, Corporal Eliud Misoi, of Directorate of Criminal Investigation (DCI) in Nakuru North, filed an Affidavit opposing the release of the two on bond.
3. The reasons were that:-
 1. The offence the two are charged with is extremely severe and the severe penalty thereof may be an incentive to abscond hence they are a flight risk.
 2. Their four accomplices are still at large and have evaded detection from the law enforcement officers owing to the gravity of the charge and the weight of evidence already collected.
 3. While the deceased succumbed to the injuries sustained during the attack at his residence, his two friends are still nursing severe injuries , are under medical care, are yet to record full statements and have P3 Forms completed to enable additional charges being preferred against the accused persons .



4. The two accused persons could interfere with witnesses considering that they hold influential positions (as a prominent businessman and a boda boda chairman, respectively), and that a large crowd had previously gathered to interfere with police investigations.
4. In their joint Replying Affidavit sworn on 8th July 2025, filed through their counsel Mr. Mongeri, the accused persons opposed the Prosecution's Affidavit, terming it frivolous and misleading.
5. They argued that they were only three suspects presented before the Magistrate's Court in Misc. Criminal Application No. E605 of 2025 where they were detained for Seven (7) days pending investigations. After that, the 3rd suspect was released without being charged, and therefore, the Prosecution's allegations of two accomplices still at large are farfetched as there is no evidence that the police are indeed proceeding with investigations.
6. They denied mobilising the boda boda riders, stating that the riders came on their own to record statements. The accused persons argued that with their phones having been confiscated, they cannot communicate to anyone thus making mobilization impossible.
7. The 1st Accused argued that being a prominent businessman cannot be a compelling reason to deny him bond.
8. Ultimately, the accused persons asserted their constitutional right to be released on bail unless compelling reasons were provided. They expressed their readiness to comply with any court-imposed conditions.

DIVISION - Prosecution's Submissions

PARA 9.

Through Mr. James Kihara (Prosecution Counsel), the prosecution maintained the Affidavit in opposition to bond. Mr Kihara maintained that there are compelling reasons advanced in the Affidavit including the leadership roles of the two accused persons in the community which could put their lives at risk due to public hostility and the potential for inter-ethnic conflict.

PARA 10.

In support of its argument, the prosecution referenced Article 49(1) (h) of *the Constitution* and Section 123 (A) of the Criminal Procedure Code, which outlines factors for consideration by the court when granting bail, which include the seriousness of the offense and the character of the accused.

DIVISION - Defence's Submissions

PARA 11.

On behalf of the defence, Mr. Mongeri submitted that the Investigating Officer's Affidavit was insufficient and based on presumptions rather than evidence as he had failed to name the four alleged accomplices or provide any evidence of efforts to trace them. It was further highlighted that while three suspects were initially detained, one was subsequently released after investigations, and only the two accused were charged.

PARA 12.

The defence challenged the prosecution's claim that the accused persons' positions as a prominent businessman and a boda boda chairman respectively, were compelling reasons to deny bail, stating these were mere allegations without proof of witness interference.

PARA 13.



They emphasised their constitutional right to bail and their presumption of innocence until proven guilty. To support their arguments, reliance was placed on the case of *Republic v Charles Omwoyo* [2020]eEKLK where it was stated that the main function of bail is to ensure the accused's presence at trial, and that denial of bail is a limitation of a fundamental human right.

PARA 14.

In conclusion, the defence submitted that the prosecution has not provided forceful or convincing or compelling reasons to deny bail. Their position was that the accused persons' place of abode is known; they are not a flight risk; and therefore, they should be granted reasonable bond terms.

Analysis and determination

15. This Court has heard the parties in their affidavits and submissions and the only issue for determination herein is whether the accused person should be released on bail/bond terms.

16. To start with, it cannot be overemphasised that an accused person has a constitutional right to be released on reasonable bail and bond terms. However, that right is not absolute. Indeed, Article 49 (1) (h) of *the Constitution* of Kenya provides that:- "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."

17. Section 123A 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 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"

18. Further, Paragraph 4.9 of the Judiciary Bail and Bond Policy Guidelines details and explains factors for consideration as to whether to deny or grant bond thus:-

- 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, unrebutted 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 labourer) 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.
19. It is therefore clear that the burden lies on the prosecution to show that there exist compelling reasons to deny an accused person bail.
 20. One of the primary reasons the prosecution sought to deny the two accused persons' bail was allegation of their likelihood to interfere with witnesses considering their leadership positions in the society, combined with the fact that other suspects remain at large.
 21. In considering these arguments, the court has considered the pre-bail reports dated 10th July, 2025, prepared by Ondari Lilian and Elizabeth Kwamboka for the 1st and 2nd accused respectively.
 22. The pre-bail report for the 1st accused describes him as a 46-year-old self-employed carpenter, a lifelong resident of Maili Kumi, and the chairperson of the local Business Committee. His family and community portray him as a hardworking and peaceful individual with no prior criminal record.



23. Though several people offered to stand surety for him and ensure that he attends court as required until the case was heard and determined, his mother offered her land as security. This led the Probation Officer to conclude he is not a flight risk.
24. Conversely, the victim's family strongly opposes bail, citing fears of ethnic and political tensions and potential witness interference. They state some community members have relocated due to fear.
25. However, the local administration generally regarded the 1st accused as a person of good character. Though acknowledging ongoing tension between the two communities which is however being handled through peace building efforts with Peace Committees having already held three sessions to mediate and resolve the underlying conflict, the administration assured that the accused's security in his own locality is not in question. However, they are unable to guarantee his security in the opposing community. Further, the community expressed desire justice in the matter.
26. Similarly, the pre-bail report for the 2nd accused, describes him as a 50-year-old pastor and chairman of the boda boda association. According to his family and community, he is a person of good morals and a leader with no criminal record. His brother offered to stand as a surety. The local administration and community support his release, believing that he is not a flight risk.
27. However, the victim's family is grieving and fears his release would lead to witness interference, believing the attack was ethnically and politically motivated.
28. From the material placed before this Court, there is no doubt as to the seriousness of the offence of murder and it is a fact that the deceased's family lost their loved one and are still grieving. Though the prosecution alleged that following an initial seven-day custodial order, a prima facie case was established against them, that cannot be ascertained by the Court at this point to support the claim the accused persons are a flight risk.
29. Regarding their safety, there is no sufficient material to show that their lives would be in danger if released on bond. There is nothing to demonstrate that the two are a threat to national security either.
30. Regarding interference with witnesses, it cannot be gainsaid that both the victim and the accused persons have a right to a fair hearing. That includes the right to present evidence before a court of law without intimidation from any quarters. Any form of interference with witnesses is a violation of such right.
31. It is noted that both the prosecution and the victim's family are fearful that the two accused persons will interfere with the witness. The reason behind that fear is the two accused persons' position in the society. That is not enough to support denial of bond in this case.
32. In the circumstances, there are no compelling reasons presented herein to justify denial of bond and therefore, this Court makes the following orders:-
 1. The Prosecution's objection to bond is dismissed.
 2. Each of the accused herein is released on a bond of One Million Kenya shilling (Kshs. 1,000,000/=) with one surety of similar amount.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF NOVEMBER, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:



Mr. Kihara for the State

Mr. Mong'eri for accused persons

Godfrey Kariuki - 1st accused

Samuel Ngugi Chege - 2nd accused

Chebet - Court Assistant

