

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. E030 OF 2024

PETER KARIUKI MAINA.....

APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

1. The accused, *Peter Kariuki Maina*, was charged with the offence of murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. When arraigned in court on 22nd October 2024, he denied the charges. On the same date, his learned counsel *Ms. Kerubo*, made an oral application seeking that the accused be admitted to bail or bond on reasonable conditions pending his trial.
2. The application was opposed by the prosecution through an affidavit sworn on 22nd October 2024 by the investigating

officer, *PC Cavin Malowa Otieno*. The principal grounds advanced in opposition to the application were that the accused's place of abode and workplace were unknown and he was thus a flight risk; that if released on bail or bond, he was likely to influence his parents who are key prosecution witnesses in this case thereby jeopardising the prosecution's case.

- 3.** In response, the accused swore a replying affidavit on 12th November 2024 in which he deposed that the prosecution had not established any compelling reason to justify his denial of bond. He further averred that the offence of murder was bailable under *Article 49 (1) (h)* of the Constitution and that he was entitled to the presumption of innocence until proved guilty. He also denied the prosecution's claim that he did not have a fixed abode and that he was a flight risk. He pledged to abide by any conditions the court may impose as preconditions to bond.
- 4.** At the hearing, *Ms. Kerubo* in her submissions maintained that the accused was not a flight risk and urged the court to allow the application. Learned prosecution counsel, *Ms.*

Muriu relying on the affidavit sworn by the investigating officer opposed the application and emphasised that, since the accused's parents were key prosecution witnesses, his release on bail was likely to result in interference with their evidence. Counsel submitted that bond should be denied at this stage but may be renewed after the accused's parents testify.

5. In her rejoinder, *Ms. Kerubo* submitted that although the accused's parents were key prosecution witnesses in this case, they were in good terms with the accused and as such, he was unlikely to interfere with their evidence. Counsel further submitted that the accused's mother was willing and ready to stand surety for him; that the accused and the deceased were not related, and that the accused was not a flight risk.
6. I have considered the application, the affidavit sworn in opposition thereto as well as the brief oral submissions made on behalf of both parties.

It is trite that under *Article 49 (1) (h)* of the Constitution, an arrested or accused person has a right to be released on

bail or bond on reasonable conditions pending a charge or trial unless there were compelling reasons not to be released.

7. The phrase “compelling reasons” was defined by the Court of Appeal in **Michael Juma Oyamo & another V Republic (2019) eKLR**; as follows:

“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 standards set by the Constitution.”

8. That said, *Section 123A (2) of the Criminal Procedure Code (CPC) as read with The Judiciary Bail and Bond Policy Guidelines 2015 paragraph 4.26* provides guidance on the factors courts should consider when exercising their discretion in deciding whether or not compelling reasons had been advanced to justify denial of bail or bond pending trial. These factors include the following;

- i) Whether the accused was likely to fail to attend court proceedings;
- ii) Whether he was likely to commit or abet commission of a serious offence;
- iii) Whether he was likely to endanger the safety of victims, individuals and the public;
- iv) Whether he was likely to interfere with witnesses or evidence;
- v) Whether he was likely to endanger national security or whether it was in the public interest or accused's own safety to detain him in custody.

9. In the present case, the prosecution has contended that the accused should not be admitted to bond or bail allegedly because he did not have a fixed abode and he was thus a flight risk. The second reason the prosecution relied on when opposing the application was that if released at this stage, the accused was likely to interfere with the evidence of his parents who were key prosecution witnesses in this case.

- 10.** The prosecution's claim that the accused lacked a fixed place of abode has been disproved by the contents of the pre-bail report filed in this Court on 11th April 2025. The report confirmed that the accused resided with his parents at Mioro Location in Mathioya Sub-County prior to his arrest. The prosecution's claim that he was a flight risk because he did not have a fixed abode therefore lacks any foundation.
- 11.** With regard to the second reason advanced by the prosecution in its opposition to the application, it is not disputed by the defence that the accused person's parents are indeed some of the prosecution's main witnesses. It is also not disputed that the accused person was residing with his parents in their home prior to his arrest and if admitted to bond or bail, he will most probably go back to living with them.
- 12.** Given the close familial relationship between the accused and the key prosecution witnesses who were his parents coupled with the claim by the accused's learned counsel that the said witnesses and the accused were in good terms, I am

satisfied that if released, there was a strong possibility that whether knowingly or unknowingly, his presence at home is likely to influence his parents to give evidence that favoured him which would adversely affect the prosecution case.

- 13.** In the premises, I have come to the conclusion that the prosecution has demonstrated that there was a compelling reason to justify denial of bond to the accused person for now and I thus decline to allow the application but the same can be renewed after the accused's parents testify.

It is so ordered.

DATED, SIGNED and **DELIVERED** at **MURANG'A** this 12th day of November 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

Accused in person

Ms Kerubo for the accused

Ms Manyal for the State

Ms Susan Waiganjo, Court Assistant