



**Republic v Njoroge & another (Criminal Case E034 of 2025)
[2025] KEHC 17152 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL CASE E034 OF 2025
J WAKIAGA, J
NOVEMBER 18, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID MWANGI NJOROGE 1ST ACCUSED

LILIAN NZISA 2ND ACCUSED

RULING

1. The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, the particulars of which were that on the 17th day of April 2025 at around 1600 hours at Kayole 1 Imani area jointly murdered Godwin Ngethe (minor).
2. They both pleaded not guilty to the charges and in compliance with the provisions of Article 49(1) (h) of *the Constitution* the Prosecution through CPL Fredrick Otieno filed an affidavit opposing bail and deposed that the deceased who was then aged ten (10) years was living with the 1st accused, his biological father, the 2nd accused his step mother and six siblings.
3. The deceased was on the material day taken for medication at Mama Lucy hospital where he was pronounced dead on arrival. The first accused made a report at Kwa Maji Police Post on the 25th April 2025, to the effect that the deceased had died in a domestic accident, while the deceased brother reported to the police that the deceased had been put in a sack by the accused person before pouring hot water on him, thereby occasioning serious burns.
4. That when the Nyumba Kumi Elder visited the accused home, they found the other children of the accused washing clothes outside the house but refused to speak to her, which was later on confirmed by the Investigation team, that the accused person had 3warned them not cooperate with the investigating team, as to do so, would lead to their father being jailed for life.



5. It was further contended that the deceased brother was placed under temporary custody and that the relatives who insisted in visiting him would issue threats to the same leading to his being relocated. The other issues of the marriage were also relocated from their home and had not been traced to date.
6. The accused persons in error, filed an application under certificate of urgency seeking to be admitted to bail on the ground that they were parents of six children who had since been left destitute and as a result denied their parental care. It was deposed further that the 1st accused was also an orphan and therefore the children did not have anyone in close consanguinity to fully provide for the.
7. In support of the application, the 1st accused swore an affidavit in which he deposed that he was a pastor at New Evangelist Church. He reported to the police the demise of the deceased and was thereafter arrested.
8. It was deposed that the deceased body was still lying in the mortuary accruing more charges. He stated that he had a fixed place of abode with ill health which could not be managed in custody and that his health was deteriorating by the day.
9. The second accused deposed that they had seven children, including the deceased who was two years old when she met the 1st accused and that she had loved all of them until the date of her arrest.
10. She stated further that she was a citizen of Kenya with a permanent place of abode and was running metal scrap collection business. She has lived with peptic ulcers which requires food that cannot be given in prison.

Pre-bail Report.

11. In compliance with the bail bond policy guidelines the court called for pre-bail report wherein it was stated in respect of the 1st accused that he was a pastor in Pentecostal Revival Church Kayole and married to the 2nd accused with five children. He had two children from his previous married including the deceased, one who was at a safe house and the deceased herein.
12. On the victims concerns, the deceased mother was contacted and stated that she didn't want anything to do with the case since she had not been in touch with the children for the past nine years and that she was happily married with another family of her own.
13. On the family ties, it was stated that the accused was well known in the Area and that the community was very hostile to the accused, hence his security was at risk should he be released on bond. On the other hand, the chief and village elders of his rural home, described him as a person of good morals, so they did not object to his release on bond. The investigating officer on the other hand strongly objected to his release citing the possibility of witness interference.
14. On the 2nd accused, it was stated that the same had close ties with all her family members, who were very supportive and willing to post bond for her. Her mother stated that she now had the burden of rising up five of the accused children. On community ties it was stated that she was well known in the area and that there was hostility towards the same as the deceased was raised in the area. They therefore objected to his release on bond.
15. The chief of her rural area and the village elders described her as a hardworking person and the bread winner of the family, they expressed no objection to her release on bond.



Submissions

16. At the hearing hereof, Ms Ogweni submitted that one of the witnesses was a blood brother of the deceased who had been placed under protective care and that there was likelihood of interference from the accused persons and their relatives. It was submitted that there was also a child of the couple who was aged 15 years and who was un-cooperating with the investigators, while the other children refused to record their statements since they were told by the accused persons not to cooperate with the investigators as their evidence will lead to the accused persons being jailed for life.
17. It was contended that the accused persons should be denied bond until the two children had testified.
18. On behalf of the accused, Ms Kamau submitted that the issue of the minor child being in children home had not been substantiated and that the accused persons should be released for the benefit of their children and so as to enable them bury the deceased.

Determination

19. Bond/bail is a constitutional right of every accused person under Article 49(1)(h) of *the Constitution* which can only be limited where there are compelling reasons advanced by the prosecution to the satisfaction of the court on a balance of probability.
20. What constitute compelling reasons has now been settled in Kenya, through the Bail/Bond Policy Guidelines and as captured by the Court of Appeal in Oyamo case that bond is a constitutional right of every accused person under Article 49 and may only be limited if the prosecution provides to court compelling reasons which the Court of Appeal in Michael Juma Oyamo & another versus Republic [2019] eKLR stated to be forceful and convincing as to make the court feel strongly that the accused should not be released on bond, thus the accused should not be denied bond on flimsy ground but on real and cogent grounds that meet the constitutional standards.
21. These reasons are captured in section 4.9 of the Bail and bond Policy Guidelines which were further captured in section 123A (1) of the Criminal Procedure Code
22. The court however should not lose sight of the fact that the purpose of bond is and remains to secure the attendance of the accused to court during the period of his trial and that the right to liberty should never be curtailed as was stated in Republic versus Nuseiba Mohamed Haji Osman [2018] eKLR, denial of a constitutional right is not to be treated lightly and any claim made against an accused person towards curtailing his liberty must not be made on speculation and conjectures
23. In this matter the fact that the accused persons are husband and wife is not disputed. The deceased herein was a biological child of the 1st accused and the step-son of the 2nd accused. Between the two of them, they have other six children whose whereabouts is not clear.
24. The prosecution has confirmed that one of the witnesses herein who is a blood brother of the deceased has been put in a safe house and therefore the possibility of interference has been lowered. In this matter the court called for social inquiry reports from the children department which were not produced in court by the time of this ruling.
25. The accused persons have demonstrated that the both verve places of abode and that the rights of their other children are likely to be prejudiced as they are now scattered amongst relatives contrary to the provisions of Article 53 of *the constitution* sub-clause (d) and (e) and (2).
26. I have further taken into account the content of the pre-bail report which has recommended the grant of bond to the accused persons and is the view that the prosecution has failed to produce before



the court compelling reasons to enable the court deny the accused persons bond at this stage of the [proceeded.

27. The accused persons shall each be released on bond pending trial on the following terms:
- a. Bond of Kenya shillings One Million Shillings (Kshs. 1,000,000) with one surety for a similar amount for each accused person
 - b. In the alternative cash bail of Kenya shillings Five Hundred Thousand (Kshs. 500,000/=) with two recognized Kenyan citizens.
 - c. The accused persons shall make no contact in whatever nature with any of the prosecution witnesses including the minor herein who allegedly witnessed the incident.
 - d. And it is ordered.

SIGNED DATED AND DELIVERED THIS 18th NOVEMBER 2025

J WAKIAGA

JUDGE

In the presence of

Court Assistant - Irene

Ms Ogweno for the Prosecution

Ms Katisya for the accused

