

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO.E018 OF 2025

REPUBLIC PROSECUTOR

VERSUS

KENNEDY KIARIE KAHUCHIO ACCUSED

RULING ON DIRECTIONS

1. On 24th September, 2025, this matter was initiated pursuant to a Charge Sheet dated 18th September, 2025 whereby the accused, **Kennedy Kiarie Kahuchio** is charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code.**

The particulars of the offence are that:-

“On 6th February, 2016 at Rolly Pub in Karuri, Kiambu Sub-county within Kiambu County, the accused murdered one Sarah Wambui Mungai”.

2. On the said day the prosecution’s counsel appeared before the Deputy Registrar and informed court that the accused had been granted anticipatory bail vide **High Court Criminal Revision Case No.E168 of 2024**, thus requested that summons issue against him to attend court for purposes of

plea-taking. The Deputy Registrar issued summons for the accused to attend court and fixed the same for mention before this Court on 6th October, 2025.

3. On 6th October, 2025, when this matter came up for mention, both counsel for the parties informed the court that although the defence had been served with summons requesting the attendance of the accused person in court, he had not traced him but undertook to avail him before court on the next mention date. This Court then extended the summons for the accused to attend court and directed that the matter be mentioned on 4th November, 2025 alongside **High Court Criminal Revision Case No.E168 of 2024** for directions on 4th November, 2025.
4. On 4th November, 2025, the accused person has attended court accompanied by his advocate, **Mr. Mutua**, in answer to the summons requiring him to attend court in respect of the charge of Murder contrary to Section 203 of the Penal Code which has been instituted against him.
5. **Mr. Mutua**, counsel for the accused person then sought to have the accused person referred for mental assessment and requested that he remains on the same terms of bond he had been granted when he sought for anticipatory bail by Hon. Justice Mshila on 17th April, 2025. **Mr. Muriuki**, counsel for the

prosecution confirmed that the accused was yet to take plea and requested that he be referred for a mental assessment to be conducted before he can take plea. Counsel pointed out that the Investigating Officer would deal with the said process.

6. Having listened to both counsel for the parties herein, this Court finds that, apart from the directions issuing on plea taking by the accused, the issue for determination is whether the terms of anticipatory bail granted for the accused on 18th February, 2025 can be extended in the prevailing circumstances.
7. I have perused the record of proceedings in **Kiambu HCCR. Rev. No.E168 of 2024** and confirm that indeed on 18th February, 2025 was granted anticipatory bail on his personal cognisance and directed to be in attendance when called upon and not to interfere with the investigations. This was pursuant to a Revision dated 21st August, 2024 in which he had sought the findings and/or orders issued by the Honourable M. A. Opondo, Senior Principal Magistrate in **Kiambu Magistrate Inquest Case No.E002 of 2018** vide a ruling delivered on 15th August, 2024 be set aside. In that ruling, the Hon. Magistrate had found that the accused herein be held accountable for

the actions that led to the death of the deceased herein and recommended that he stands trial for his said action, so that he undergoes full legal proceedings to determine his guilty and/or innocence.

8. The Honourable Judge in considering the revision application issued orders to stay the trial Magistrate's orders pending the determination thereof.
9. It is also at that time that counsel for the accused sought and the accused was granted anticipatory bail since he was apprehensive of being arrested pursuant to the findings and recommendation of the trial Magistrate that he be made to stand full legal proceedings to determine his guilt or innocence in respect of the death of the deceased herein.
10. The accused person is now formally charged with the offence of **Murder contrary to Section 203 of the Penal Code**, which offence is bailable as per our **Constitution, 2010**. The question then becomes, can the accused person continue enjoying the anticipatory bail that he was granted on 18th February, 2025? In this regard, it is important to highlight the distinction between the two regimes of bail and bond.
11. Anticipatory bail is a remedy derived **from Article 23(1) as read with**

Article 165 of the Constitution, 2010, and is meant to be a safeguard against infringement, violation and or denial of fundamental rights and freedoms. Its purpose is to protect an individual from arbitrary or unlawful arrest before he or she is formally charged with an offence before a court of law. This bail is granted on terms and conditions set by the court and is for a limited period.

12. The Judiciary Bond and Bail Policy Guidelines provides that:-

“The High Court may grant anticipatory bail, that is, bail pending arrest, provided the Applicant demonstrates that his or her right to liberty is likely to be compromised or breached unlawfully by an organ of the State that is supposed to protect this right. Further, the Applicant must demonstrate that the apprehension of arrest is real and not imagined or speculative.”

13. Once an individual is formally arrested and charged with a cognisable offence before a court of law, the order for anticipatory bail lapses and the individual is then required to make a formal application for bail or bond pending trial as specifically provided for and guided by principles under the Constitution and statute. This application can be made at any stage of a criminal trial after the arrest of an individual and court’s discretion to grant

or deny such application is only limited where compelling reasons and or circumstances are demonstrated.

14. The right to bail for an arrested person is underpinned on the presumption of innocence as provided for under **Article 50(2) (a) of the Constitution** which states that:-

“(2) Every accused person has the right to a fair trial, which includes the right—

a) to be presumed innocent until the contrary is proved;

15. Under **Article 49(1)(h) of the Constitution** guarantees the right for an arrested person to be released on bail in following terms:-

“(1) 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.

16. The factors to be considered in granting an accused/arrested person bail/bond are set out under **Section 23 of the Criminal Procedure Code** as follows:-

[23] Power to break out of house, etc., for purposes of liberation

“A police officer or other person authorized to make an arrest may break out of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein”.

17. In the instant case, the accused has been availed before court to answer to the charge of Murder. Therefore, the anticipatory bail terms cannot be sustained as the same have lapsed by operation of the law, the purpose thereof having been achieved.

18. However, as a matter of practise, even though he has been informed of the said charge and information in the charge sheet dated 18th September, 2025, the accused is yet to take plea as he has not undergone a mental assessment to confirm his mental status.

19. It is also worth noting that although the accused person is entitled to release on bond/bail terms as a constitutional right, the same is not absolute since the court is required to grant the same upon a consideration of the circumstances of the case and a report on the accused person's social, economic and political backgrounds. **Article 49(1) (h) of the Constitution** provides:-

“(1) 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.

20. In interpreting this provision, the court in the case of Charles Owanga

Aluoch –vs- Director of Public Prosecutions [2015]eKLR held that:-

“The right to bail is provided for under Article 49(1)(h) of the Constitution but is at the discretion of the court, and is not absolute”.

21. In view of the prevailing circumstances, the Court proceeds to order:-

- a) The accused to be escorted to Kiambu Level 5 Hospital for mental assessment within seven (7) days from the date hereof.*
- b) The matter is referred to the Probation and After Care Services for a Social Inquiry to be conducted on the accused person to assist in the determination of the accused person’s suitability for release on bond/bail.*
- c) A Pre-bail Report to be filed and served upon the parties within the same seven (7) days from the date hereof.*
- d) The accused person to be remanded in custody at the Nairobi Remand Home pending further directions on plea-taking and other appropriate orders.*
- e) Mention on 17th November, 2025 for parties to confirm*

compliance and take further directions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU

THIS 4TH DAY OF NOVEMBER, 2025.

**D. O. CHEPKWONY
JUDGE**