

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL CASE NUMBER E009 OF 2025**

**PATRICK MWANIKI NJAGI.....ACCUSED/APPLICANT**

**-VERSUS-**

**REPUBLIC.....PROSECUTION**

**RULING**

**Background**

1. The applicant is facing the charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the night of 17<sup>th</sup>/18<sup>th</sup> September 2024 at Kiritiri town, Mbeere South sub-county within Embu County, the accused, jointly with others not before court, murdered Paul Musembi Kioko. The accused pleaded not guilty and the plea was duly entered.

**The Application and Responses**

2. The applicant applied to be released on reasonable bail/bond terms pending hearing.
3. The respondent, through CI Janet Akelo filed an affidavit opposing the bail application. In it she stated that the accused committed the offence alongside his siblings and there were some eye witnesses who include the accused's roommate and the deceased's wife.
4. That the siblings of the accused have constantly been intimidating the eye witness until one of them ran away after being summoned by police during investigations. She produced copies of OB showing that the wife of the deceased reported assault and threats by the accused's family members who had plotted to kill her so that she does not testify. On this basis, the respondent urged the court not to release the accused on bail because he is a threat to the witnesses.

**Pre-bail Probation Officer's Report**

5. According to the probation officer's report, the accused is a repeat offender, having previously been convicted and sentenced for stealing. The report also reveals that the

victim's wife has suffered intimidation from the accused and his family on 2 occasions and she reported the incidents to the police. The local administration knows about the accused's criminal trends and they said that he is a bully. They stated that the accused's behavior has affected his family and his children's relations with other people in the village.

6. The local administration is also aware that the victim's wife has been threatened by the accused's siblings, and, on this basis, they recommended heightened bond terms to deter the accused and his family from accessing the victim's family. The family of the accused recommended favourable bond terms and they already have somebody to stand surety for the accused in any event. Ultimately, the report recommended that the accused person may be released on bond terms with a trusted surety.

### **Issue for Determination**

7. The issue for determination is whether the applicant should be released on bail/bond.

### **Analysis and Determination**

8. An accused person is presumed innocent until proven guilty. It is on this basis that applications for bail are founded. The Judiciary Bail and Bond Policy Guidelines recommend that:

***“The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.”***

9. However, the right to bail is not without limits as provided under Article 49(1)(h) of the Constitution which provides for the right to bail pending trial as follows:

***“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” [Emphasis added]***

10. The court may deny bail under certain circumstances and where the court is satisfied that there are compelling reasons to deny bail. Section 123A of the Criminal Procedure Code provides instances where bail may not be granted, 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 fulfillment 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.”**

11. The Bail and Bond Policy Guidelines provide guidance on factors the court can consider in assessing whether or not to grant bail. They are, *inter alia*;

**a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.**

**b. The strength of the prosecution case.**

**c. The character and antecedents of the accused person.**

**d. The failure of the accused person to observe bail or bond terms.**

**e. The likelihood of interfering with witnesses.**

**f. The need to protect the victim or victims of the crime.**

**g. The relationship between the accused person and the potential witnesses.**

**h. The best interest of child offenders.**

**i. The accused person is a flight risk.**

**j. Whether the accused person is gainfully employed.**

**k. Public order, peace and security.**

**l. Protection of the accused persons.**

12. With the foregoing in mind, it is noted that the accused has been previously convicted and sentenced by another court. According to the probation officer's report, the accused is a bully who has gone as far as threatening the victim's wife, who is a

prosecution witness. It appears from the report that the accused, through his siblings, is still actively threatening the witnesses who are scampering for their safety. The accused and victim's families live in close proximity to each other.

13. This speaks to his character and likelihood of interfering with witnesses, as factors to be considered by the court. The investigating officer's apprehension that the applicant will interfere with witnesses, cannot be ignored. In fact, it may well be a compelling reason to deny bail pending trial. The respondent stated that it has already lost one eye witness who walked out of an investigation meeting to receive a phone call and he has never been seen since. The victim's wife is also an eye witness who currently fears for her life.

14. A compelling reason is not merely an allegation. In the case of **Michael Juma Oyamo & another v Republic [2019] KECA 953 (KLR)** the Court of Appeal adopted the meaning of the phrase "compelling reasons" as was stated in the case of **R v Joktan Malende and 3 Others Criminal Case No. 55 of 2009** where the Learned Judge held as thus; -

*"..... 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."*

15. Previous courts have addressed themselves on the issue of whether interference with witnesses is a compelling ground to deny bail. In the case of **Republic v. Gerald Mutuku Nyalita & Another (2015) eKLR** it held that; -

*"In considering the likelihood of interference with witnesses as a compelling ground to refuse bail in terms of Article 49 (1) (h) of the Constitution of Kenya, the Prosecution must, in my view, demonstrate a more than whimsical probability of interference. It must be shown that the accused persons are in such close family, filial or other relationship which creates an environment of control and influence of the witness by the accused person such as to interfere with the ability of the witness to give evidence before the court in a free and truthful manner thereby affecting either the credibility of the witness in his or her testimony before the court or the very ability of the witness to attend court. The tenderness of age or*

***the mental acuity of the witness may be factors to be considered in the determination as to the likelihood of interference. The nature of the testimony of the witnesses – as eye-witness or circumstantial – is also relevant...”***

16. Similarly, in the case of **Republic v Patrick Ntarangwi [2020] KEHC 2140 (KLR)**, the court held that:

***“In considering the question of bail or bond, the court should balance the right of an accused, pursuant to the presumption of innocence, to be released on bail pending his trial against the public interest of prevention of crime and the right of the victims to access to justice. The right of the victims to access justice no doubt will be gravely affected if the prosecution witnesses are interfered with.”***

### **Disposition**

17. In light of the foregoing discussion, it is my view that to grant bail to the applicant could possibly lead to witness interference. The court has also considered the fact that the applicant has previously been convicted and sentenced for stealing. In the circumstances, I am persuaded to decline the bail application at this time.

18. The court will consider release of the applicant on bail/bond terms at a later date when the key witnesses have already testified. This is in line with the Bail and Bond Policy Guidelines, thus:

***“4.36 Courts shall inform accused persons of their rights to apply for review of bail decisions and conditions. Bail decisions and conditions should be reviewed on a regular basis, as the circumstances of the accused person and the case change.”***

19. The bail application is therefore dismissed and a fresh application may be considered after the testimony of the key witnesses.

20. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 26<sup>th</sup> day of November, 2025.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Accused present in Court
2. Chepkorir for Accused

3. Ms. Nyika for the Respondent
4. Francis Munyao - Court Assistant