

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. E007 OF 2025

(CORAM: HON. CHARLES KARIUKI – J

REPUBLIC.....PROSECUTION

-VERSUS-

ELIZABETH NAMATAKA.....1ST ACCUSED

JOSEPH GICHUHI.....2ND ACCUSED

RULING

1. The accused persons are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars are that on 26/4/2025 at the radio Ogotua area, Olorropil Sub Location, Narok County, murdered Natasha Muthoni. They denied the charge, and the matter is at the bail ruling and pre-trial directions stage.
2. The contest over the grant of the appeal application was canvassed. The Applicant Advocate sought orders for the accused persons to be released on bail/bond on reasonable terms. He invokes provisions of Articles 49 and 50 of the Constitution of Kenya.
3. The prosecution opposed the application, relying on the Pre-bail Report and the Investigating Officer's Affidavit. The applicants argue that, as a constitutional right, bail ought to be granted to them as they are presumed innocent until proven guilty. The prosecution relies on Pre-bail Reports and the I O Reports filed in support of the opposition, arguing that the accused persons, number (2), is a Kenyan and accused No. 1, a foreigner from Uganda, and are both likely to abscond and may never be traced as they have no place of abode. The prosecution also emphasizes that there is a danger in releasing accused persons, given the prevailing circumstances and the element of flight risk on their part. There is no family support for accused persons, nor any person willing and ready to serve as sureties in the event they are granted bail.
4. The grounds for granting bail pending trial are based on the constitutional principle of the presumption of innocence, which states that an accused person should be released on reasonable conditions unless there are compelling reasons not to. Courts will consider if the accused is likely to abscond, commit another crime, endanger others,

interfere with witnesses or evidence, or threaten national security. For a convicted person seeking bail pending appeal, additional grounds include demonstrating that the appeal has a high chance of success and that the sentence will likely be served before the appeal is heard. The court recognizes that while bail is a constitutional right, it is not absolute, and the current circumstances justify denying bail to prevent flight or interference.

5. The 10 Affidavits and the Pre-bail Reports feature some of the above grounds as they stand at the moment. The accused persons have not filed Affidavits in rejoinder. One of the accused is a foreigner (Ugandan), while the other is said not to have a place of abode.
6. In the circumstances of the case, it is safe to defer the bond application and the granting of the bond for a while as we hear the matter. In the future, they can apply if circumstances change and the trajectory of the prosecution case indicates a possible outcome.
7. The court recognizes the constitutional rights of the accused persons but emphasizes that these rights are not absolute, which should reassure the parties of the court's balanced approach. Therefore, the court denies bail at this stage but allows the accused to reapply if circumstances change in the future.
8. Final orders.
 - I) **The application for bail/bond is denied.**
 - II) **The accused will be at liberty to apply in future once circumstances change.**

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS
28TH DAY OF NOVEMBER 2025**

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CHARLES KARIUKI
JUDGE