



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mbilika (Criminal Case E018 of 2025)
[2025] KEHC 17674 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17674 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E018 OF 2025
FN MUCHEMI, J
NOVEMBER 27, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KELVIN OLINGA MBILIKA ACCUSED

RULING

1. The accused person was charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the night of 18th June 2025 at Cravers Area within Thika West Sub-County within Kiambu County jointly with another not before court unlawfully killed No. 116727 Pc. Bernard Koome.
2. The prosecution filed an Affidavit of Compelling Reasons which they headed as an Affidavit in Opposition to Bond dated 11th August 2025 sworn by CPL James Kiogora who is the investigating officer in the instant matter. He deposes that the accused person is likely to interfere with witnesses as they are known to him. Further, the accused person is a flight risk as his fixed aboard has not been established thus posing a danger of him absconding court if released on bond.
3. The deponent avers that the accused person's life is in danger and if released, he might face retaliatory attacks from the victim's relatives. The deponent further avers that the murder weapon has not been recovered and it will likely be used against the witnesses in the present case.
4. In opposition to the application, the accused person filed a Replying Affidavit dated 9th October 2025 and states that the affidavit by the prosecution is full of misrepresentations, generalizations which have no impetus on his specific situation and the court's jurisdiction to grant bail.
5. The accused person avers that he has a known aboard where he has been residing for the past five years in Kahawa Sukari. The accused person further avers that he is a Christian, has a wife and child and they



live all live together. Further, for the past five years, he has worked in Kahawa West as a casual labourer and he is a well known person in the community.

6. The accused person states that he does not know the alleged victim or any of his family members thus the allegation that he is a flight risk is ridiculous and preposterous. Further, the documents presented to the court reveal that there is no witness statement tying him to the crime. The only basis of the charge is that a phone number allegedly belonging to him was claimed to have been within the vicinity of the crime scene. The accused person argues that the identity card that was used to register the said phone number was lost and the same had been reported missing and he applied and was issued with a new identity card.
7. The accused person argues that the prosecution cannot insinuate that he was in possession of the alleged murder weapon with nothing ever showing that he had ever been in possession of the same.
8. The accused person states that to deny him bail or bond on the basis of the affidavit would be a travesty of justice as he should be held as innocent until proven guilty. The accused person further states that he is ready and willing to abide by any reasonable terms that the court may impose on him to enable him be released on bond.
9. The accused person states that he is the sole provider to his family and holding him in remand during the pendency of the trial would mean that his family would continue to suffer without his provision.
10. Parties put in written submissions

The Prosecution's Submissions

11. The prosecution relies on Article 49(1)(h) of *the Constitution*, Section 123A of the Criminal Procedure Code, the Bail and Bond Policy Guidelines and the case of Michael Juma Oyamo & Another v Republic [2019] eKLR and submits that the prosecution has presented compelling reasons to warrant the denial of bail or bond to the accused person. The prosecution submits that the accused person shall interfere with the prosecution witnesses as they are well known to him. As such, the said witnesses will not be able to testify freely if the accused person is released on bail or bond.
12. The prosecution submits that the accused person is a flight risk as he does not have a fixed abode and his family background or rural home is not known and if he is released on bond and escapes, he will not be traced. The prosecution further submits that the murder weapon has not been recovered and is more likely to be used against the witnesses in the case. If the accused person is released, it will be more difficult to recover the murder weapon and he shall continue committing other offences while out on bond.
13. The prosecution further submits that tension and hostility is still high where the incident occurred and the locals of the village and the community may retaliate if the accused person is released on bond. Thus, the accused person's life would be in danger if released on bail/bond and pursuant to Section 123(2)(b) of the Criminal Procedure Code and paragraph 4.9 of the Bail and Bond Policy Guidelines recognizes safety or protection of the accused as a compelling reason.

The Accused Person's Submissions

14. The accused person relies on Article 49(1)(h) of *the Constitution*, Section 5(1) of the Bail Act and the case of Geoffrey A. Ochieng' & Another [2013] eKLR and submits that the right to bail is a fundamental right and must not be denied arbitrarily.



15. The accused person further relies on the case of Republic v Stephen Mwangi [2015] eKLR and submits that he was traced by phone however no incriminating items were recovered. As such, he is not a flight risk nor does he intend to interfere with any witnesses. Relying on the case of Republic v Mburu Njuguna & Another [2017] eKLR, the accused person submits that he is a responsible family man with a wife and child who depend on him economically and emotionally. Further, he resides in Kahawa West where he is well known and integrated in the social fabric.
16. The accused person refers to the case of Republic v Joseph K. Mwangi [2019] eKLR and submits that there is no evidence that he has interfered or will interfere with witnesses or evidence. Bail conditions can be imposed to prevent such interference including reporting requirements and restrictions on communication.

The Law

Whether the reasons for opposing bail are merited in terms of Article 49(1)(h) of *the Constitution*.

17. Article 49(1)(h) of *the Constitution* provides that:-
An accused 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.
18. It follows that the right to bail is not absolute and where there are compelling reasons, that right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
19. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 which sets out judicial policy on bail thus:-
“the following procedures should apply to the bail hearing:
 - a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-
 - b. That the accused person is likely to fail to attend court proceedings; or
 - c. That the accused person is likely to commit, or abet the commission of, serious offence; or
 - d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
 - e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - f. That the accused person is likely to interfere with witnesses or evidence; or
 - g. That the accused person is likely to endanger national security; or
 - h. That it is in the public interest to detain the accused person in custody.”



20. In Republic v Fredrick Ole Leliman & 4 Others [2016]eKLR the court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of Ng’ang’a v Republic 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

- a. The accused will fail to turn up at his trial or to surrender to custody;
- b. The accused may commit further offences; or
- c. He or she will obstruct the course of justice

The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
- b. The strength of the prosecution case;
- c. The character and antecedents of the accused;
- d. The likelihood of the accused interfering with prosecution witnesses.”

21. The issue that arises is whether the reasons adduced by the prosecution are compelling reasons such that the court should not grant bail pending trial.

22. It is also argued that the murder weapon has not been recovered and that it is likely to be used against the witnesses. I find this argument absurd in that the accused could use any other weapon if he had intention to harm the witnesses. Again, there is no such evidence of intention or attempt to harm any of the witnesses.

23. The prosecution has argued that the accused person is a flight risk, that he shall interfere with the prosecution witnesses and that his safety is at stake. Further, the allegation that the accused person is a flight risk is not supported by any evidence and neither is that the accused person’s life is in danger, which are all matters of speculation.

24. In the case of R v Joktan Mayende & 3 Others (2012) eKLR, the court in considering the scope of Article 49(1)(h) stated as follows:-

“The phrase “compelling reasons” denote that the reasons are forceful and convincing as to make the court feel strongly that the accused should not be released on bond. Bail should therefore not be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”

25. The accused person averred that he is a resident of Kahawa Sukari, where he has lived for the past five years and has strong community ties. He has annexed his rent receipts to show that he is paying rent in Kiamumbi/210.



26. The prosecution in my view, has failed to present any cogent evidence to support the allegations in the affidavit of compelling reasons. Having carefully considered the grounds relied on, it is my view that the reasons given do not pass the test set out under Article 49(1)(h) of *the Constitution*.
27. In my considered view, the prosecution has not proved on a balance of probabilities that they have compelling reasons to warrant the denial of bail.
28. In the absence of compelling reasons, it is my considered view that the applicant ought to be released on bond. The accused shall be released on bond of Ksh.1,000,000 with one surety of a like amount.
He shall not leave the jurisdiction of this court without its permission.
29. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

