



**REPUBLIC OF KENYA**  
**THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. E029 OF 2024**  
**REPUBLIC -VS- DOMINIC MALUKI MUSYOKA**  
**RULING ON BAIL.**

1. The accused was charged with murder contrary to section 203 as read with 204 of the Penal code. The particulars of the charge sheet read:
2. On 13/3/2024 at Umbrella Apartments Imara Daima Embakasi subcounty within Nairobi the accused murdered **CATHERINE MALUKI MUSYOKA.**
3. The Accused was found fit to plead on 22/4/2024 and on being read the charge, he denied the charges and filed Chamber Summons dated 25/7/2024 seeking reasonable bail and/ bond terms pending determination of the case.

**GROUND OF THE APPLICATION.**

4. The application is brought on grounds that the accused was charged with causing the death of his wife. The accused and the deceased have 4 children aged between 8 and 22 years and the family lived at Pipeline area. That 3 of their children are school going children, the death of their mother and the accused incarceration caused suffering on the children who attend school.
5. That the Accused has own fixed abode at his rural home in Kitui County and in Nairobi he is not a flight risk and he is willing to cooperate and abide with terms and conditions of bail.
6. The accused argues that there is no compelling reason to warrant his detention.
7. The application is brought on the deposition of the affidavit of Eric John Mutemi, the Accused's Counsel filed on even date.
8. Counsel depones that the accused is the sole breadwinner and that the children have been left to solicit for help from well-wishers and to fend for themselves.
9. That the Applicant is Constitutionally entitled to benefit from the presumption of innocence and in the interest of justice he should be released on bail/bond.

### **REPLYING AFFIDAVIT.**

10. The prosecution refer to the affidavit of PC Todd Achola which is not on record.

### **WRITTEN SUBMISSIONS.**

8. The Applicant and the prosecution filed submissions on the application.

9. The Prosecution referred to the affidavit of PC Todd Achola from Directorate of Criminal Investigations at EMBAKASI and the Pre-bail Report in support of their submissions.

10. The Prosecution's case is that there is risk of witness interference. That the offence occurred in a familial setting and the core witnesses in the case comprise of the accused immediate family members, the accused's daughter who is a minor and a vulnerable witness, the deceased's sister and the accused's sister and her husband. That the accused's neighbor who effected arrest will also be a witness.

11. The Accused person as patriarch and central figure of the family wields significant influence;

which is a well founded apprehension that with intimate familial ties to intimidate, coerce or persuade these witnesses to alter their testimony or fail to attend Court.

12. The Prosecution refer to the case of **Republic -vs- Joktan Mayende & 3 Others 2012 KEHC 551** and further argue that the accused will exert due pressure on these key witnesses and will jeopardize the prosecution case.

13. That the accused conduct before and during arrest proves a propensity to evade justice and that he is a flight risk

14. That the accused did not report the case and that he engaged in a calculated scheme to conceal the crime by attempting to dispose of the deceased body with the help of a boda boda rider.

**15.** That the plan was halted by police officers who arrived at his residence as the accused fled by jumping from the first floor of the building. The accused was not willing to submit to the authority. Reliance is placed on the case of **Republic -Vs- Mohamed Mohamed Omar & Others Criminal case no 14 /2010**

16. Further that the accused does not have a fixed abode and his matrimonial home is no longer viable. That his claimed place of abode at Galana farm was refuted by the company officials. He lacks a stable verifiable residence which makes it difficult to trace him if he absconds.

**17.** That the gravity of the offence provides strong incentive for absconding as ruled in the case of **Republic -Vs- Ahmed Mohamed Omar & 6 others (2010) eklr.**

18. Lastly that the accused does not have a surety and/or community ties. The prosecution submits that the accused family does not have property in their names and his place of abode could not be established. The accused employment and residential connections were also refuted making it difficult to trace him if security is forfeited.

**THE ACCUSED SUBMISSIONS.**

19. The Accused reiterates that there is no risk of witness interference and that there was no concern raised on this issue. That he is of good character in the eyes of the society. That there is no compelling reason demonstrated and the Court cannot deny him bail on speculation. The

Accused admits that he has relationship with the children and the primary victim in the case.

20. He prays for reasonable bond terms and urges that he worked as a caretaker before arrest and he has been in prison for the last 1 year.

21. The Pre-bail report was filed in the case following directions issued by this court.

**PREBAIL REPORT.**

22. The Accused hails from Kitui East and has related well with the family. He is the 1<sup>st</sup> born of 7 children and his parents are elderly and rely on him financially.

23. The accused is also a leader of the family and the accused family is willing to mobilize resources for bail and will be committed to his compliance. The accused brother Stephen Masia is willing to be surety and the family will accommodate the accused in the rural home.

24. The accused is the sole bread winner and he lived with his nuclear family in a one roomed house at Kware in pipeline area. The accused has 4 children attending school between form 4 and grade 8.

25. The victim statement was recorded from the views of the deceased parents and siblings. The

deceased was 40 years and was a housewife. The family depended on the accused and the deceased death and the applicant's incarceration has affected their livelihood.

26. The families have had talks over time and the victim family is not opposed to the application. They undertake to co-exist harmoniously.

27. The Community views are on record, that the accused is well known in the area and the events that led to the arrest still shock many people. The community is not opposed to his release on bond and is of the view that his release is unlikely to have negative effect on the public safety and security.

28. That bail/bond can be granted since further incarceration will affect financial and emotional state of family. There is also no threat posed to the society if he is released.

### **ANALYSIS AND DETERMINATION.**

29. I have considered the application for Bail/Bond & the grounds of the application and the

compelling reasons urged by the prosecution in opposing the accused right to bail.

30. The Constitution provides for the right to bail pending trial as a right to all arrested and accused persons. **Article 49 (1) (h)** of the Constitution provides that this right can be limited where compelling reasons exist.

31. The Constitution does not define or list compelling grounds. Section 123A of the Criminal Procedure Code lists these grounds and guiding considerations for the Court. The Court considers cases on their own merit and peculiar circumstances since no case is similar to the other. The Accused's personal circumstances are key in considering whether to grant bail and on what terms.

32. The main consideration is whether the accused will attend trial if bail is granted and how attendance can be facilitated. Paragraph 4.9 of the Bail and Bond Policy Guidelines, 2015 and the case of [REPUBLIC -Vs- DANSON MGUNYA & another \[2010\] KEHC 4116 \(KLR\)](#) Ibrahim J referring to Porter J in **WATORO -V- REPUBLIC (1991) KLR** held that:

***“The Primary consideration is whether the Accused person shall attend court and be available at the trial. All factors, and facts and circumstances must be considered with this central principle in mind. ”***

33. Further, the accused is presumed innocent until the case, claims or allegations in the charges are proved at the trial. This presumption requires that bail should be denied as a last resort.

34. In ***Republic -v- David Nyasora Nyamongo*** Criminal Case No. 90/2010, High Court Kisii U.R, Justice Makhandia (as he then was) the Judge stated:-

***“At the end of the day however, whether or not an accused should be admitted to bail, is largely a matter of discretion of the court to be exercised in terms of the Constitution, the law applicable, taking into account the gravity of the***

***offence, the risk of absconding, the risk of influencing witnesses, the overriding consideration of granting bail which is whether the accused will turn up for his trial once granted bail. Again the court must bear in mind the other principle purpose for granting bail which is to reinforce the cardinal principle of criminal law that an accused is presumed innocent until the contrary is proved. Therefore unless there are compelling reasons for not doing so pending such trial the accused ought to be released on bail."***

35. It is common ground that the deceased was the Accused's wife and that they had children, they also lived together at Pipeline where the offence is claimed to have occurred. The Prosecution's case is that the offence occurred in a familial set up, the court is advised, albeit in submissions, that the neighbours , the accused

sister and brother in law and his daughter are listed as key witnesses and releasing the accused will jeopardize the case.

36. In **Republic -Vs- Dwight Sagaray & 4 Others [2013] KEHC 3824 (KLR)** the court explained the threshold for proving witness interference, holding that:-

***“For the prosecution to succeed in persuading the court on this criteria however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others. “***

37. Therefore, the burden of proof is on the prosecution to demonstrate perceived interference and that witness can be reached.

Further that the accused will have some influence on their ultimate testimony.

38. In the case of **Panju -Vs- Republic [1973] E.A 284**, the court was emphatic that before any one can say there would be interference with vital witnesses, at least some facts should be led to the court, otherwise it is asking courts to speculate.

39. It is also true that a familial relationship poses threat of witness interference since the accused cannot avoid coming to contact with his family and friends.

40. The prosecution's other ground is that the accused lacks a place of abode and that his residential and commercial connections have been refuted.

41. It is not in dispute that the accused and his family lived in a rental house where the offence also occurred. Therefore, the accused cannot go back to the same residence.

42. The accused family and the Pre-bail Report confirm that he hails from Kitui in Kitui West Location. It is also stated that his family will accommodate him at the rural home.

43. The accused is also claimed to be a flight risk after he attempted to flee during arrest, he also allegedly planned to hide the deceased body with the help of a boda boda rider. I find that these concerns would be proved during evidence and that at this stage, stringent bond terms and reporting and accountability on his whereabouts will keep him within the court's jurisdiction. Competent sureties can also help mitigate risks of him taking flight.

44. As stated above the accused personal circumstances are to be considered with other competing interests in the administration of justice. The accused and the deceased family depended on him. There have been talks between the families.

45. The death of a daughter, sister and mother of the children caught up in this case will remain a painful sore during the case. However, the children also depended on the accused who is their father and still has parental responsibility to provide for their school and basic needs.

46. I hold that witness interference in this case is not speculative, however, further interests such

as the livelihood and the future of the children in the matter are also key. This requires balancing these rights and interest, the law did not foresee limitation or curtailing **Article 53 of the Constitution** in favor of the children in this case or any other children. Instead, all children deserve equal benefit and protection of the law.

### **DISPOSITION**

- 1. In the upshot, I find that Bail/Bond is declined at this stage. The prosecution will make arrangements for the testimony of all key vulnerable witnesses who are family members and specifically the children first, then bail/bond Application maybe renewed.**
- 2. The Probation officer and Children Officer will compile an updated report on the whereabouts and education of the children and propose suitable arrangements.**
- 3. Further mention on 2/12/2025**

**DELIVERED SIGNED & DATED IN OPEN COURT  
CRIMINAL DIVISION AT NAIROBI THIS 25/11/2025  
VIRTUALLY/PHYSICALLY.**

**M.W. MUIGAI  
JUDGE**

ORIGINAL