



**Republic v Nganga (Criminal Revision E030 of 2024)
[2025] KEHC 17945 (KLR) (Crim) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E030 OF 2024
MW MUIGAI, J
NOVEMBER 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES GITAU NGANGA ACCUSED

RULING

Information

1. The Accused Person James Gitau Ng'ang'a, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap.63 Laws of Kenya.
Particulars of the offence being that on the night of 27th and 28th February 2024 at Bahati Area in Kamukunji Sub-County within Nairobi County murdered Pauline Wairimu alias Mama Jesse.
2. On 23rd May 2025 the information and charge and all ingredients were read and explained to the Accused person in Kiswahili he pleaded not guilty and his advocate prayed orally before Court for the accused to be released on Bail. The prosecution opposed bail or bond being granted.
3. The Plea-taking Court No 1 granted the Republic to file Affidavit opposing Bail /Bond by 24/5/2024 and corresponding leave to the Defense to file and serve Response within 7 days.
4. The Pre-Bail report to be furnished to the Court.

Accused Person's Submissions.

5. That notwithstanding, a pre-bail report was filed by Probation Officer Kiriga Kimani dated 1st July 2025, which clearly addresses the accused's eligibility to be admitted to bail/bond.



6. In *Republic v Francis Kimathi* [2017] KEHC 1058 (KLR), where the accused person was similarly charged with murder, the Court held that in the absence of compelling reasons, bail should be granted on reasonable terms.
7. In the above-mentioned matter, Hon. Justice Francis Gikonyo Muthuku stated as follows:

“Similarly, the pre-bail report did not reveal any compelling reason not to release the Accused Person on bond. Accordingly, there being no compelling reason as required under article 49(1) (h) of *the Constitution*, nothing prevents this court from granting the accused bail. As such, the Accused Person may be released on paying cash bail of Kshs. 100,000 or upon signing of a personal bond of Kshs 200,000 with a surety of a similar amount.”
8. In the foregoing, he humbly submit that the same principle ought to apply here.
9. He urged the court to note that denying the Accused Person bail/bond would, in effect, amount to pre-trial incarceration throughout the pendency of these proceedings. Such denial would offend the presumption of innocence under Article 50(2)(a) of *the Constitution* of Kenya, 2010 and can only be justified where compelling reasons are demonstrated; a burden that squarely lies with the Prosecution under Article 49(1)(h).
10. In conclusion, the Defense respectfully submits that this Honorable Court retains the discretion to grant bail under Section 123(2) of the Criminal Procedure Code, Cap. 75, which provides that bail shall not be excessive but fixed with due regard to the circumstances of the case.
11. The Pre-bail report demonstrates that the Accused person has strong Community ties and that the local administration raises no objection to his release. His siblings are willing to provide surety and ensure compliance with Court attendance. The Report expressly recommends admission to bail/bond with appropriate terms.
12. The Pre-Bail Bail Report establishes that the accused hails from a low-income background. It is therefore prayed that bail or bond be set at a reasonable and attainable level, so as to give meaningful effect to the constitutional right under Article 49(1)(h), and to uphold the principles of equality before the law and access to justice enshrined in Articles 27 and 48 of *the Constitution* of Kenya.
13. The Applicant Accused Person submitted that the Prosecution purported to file an Affidavit opposing bail/bond, the same was never served upon the Defense. This is in contravention of Article 50 (2) of *the Constitution* that guarantees fair trial.

Affidavit to Oppose Bond by Prosecution

14. On 30th July 2024 No. 100678 PC Josphat Mungania of DCI Buruburu filed an Affidavit opposing grant of Bail/Bond and stated as follows:-
 1. that the accused and deceased, lived as husband and wife within Bahati area in Kamukunji Sub-County within Nairobi County.
 2. That the deceased met her death after being stabbed nineteen times with a knife.
 3. That the house the accused was staying in at the time of the commission of the offence was rented by the deceased.



Prosecution's Submission

15. In the affidavit in opposition of bond sworn by the investigating officer, there are two compelling reasons raised, as to why the accused should not be released on bond or bail: -

1. The accused is likely to interfere with witnesses.
2. The accused is a flight risk and has no place of abode.

16. In this case, it is well established that the key prosecution witnesses in this case are persons who are well known to the accused person. The accused person and the deceased were living together as a married couple, the incident occurred at their house and some of the witness prosecution intends to call are the deceased's relative and neighbors who are well known to the accused person, therefore there is a high likelihood that the accused person will interfere with the key prosecution witnesses.

17. The Court in *Republic & Nyabuti & another (Criminal Case E016 of 2023) [2023] KEHC 26319 (KLR) (Crim) (8 December 2023) (Ruling)* quoted the case of *R. v Fredrick Ole Leliman & 4 others, Nairobi Criminal Case No 57 of 2016 (2016) eKLR* where Hon Justice Lesiit (as she then was) held that:-

“Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated: the likelihood that accused may interfere with the evidence; or may endanger an individual or individuals or the Public at large: Likelihood the accused may commit other offences”

18. In the case of *Republic vs. Fredrick Ole Leliman & 4 Others [2019] eKLR*, Hon Justice Lesiit (as she then was) denied accused persons' bond. At paragraph 72, and stated that:-

“In regard to public interest and the compromise of the criminal justice system through various forms of interferences with the case, all that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons.”

19. Further in *Republic v Barasa (Criminal Case E021 of 2022) (2023) KEHC 18289 (KLR) (19 April 2023) (Ruling)* the Court explained how witnesses may recind to fear due to the presence of the accused in their midst by quoting the decision in *Republic v Fredrick Ole Leliman & 4 others [2016] eKLR* where it was held that:-

“It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility....

Murder is a serious offence and attracts the death penalty Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk ground knowing



that their evidence is critical to the success of the prosecution care That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety."

B. The Accused Has No Fixed Abode

20. The accused person has no fixed abode, the accused person, prior to the arrest was residing at the home which was rented by the deceased, and after the incident the family of the deceased carried away her households' items from the said house, leaving the accused person with no known fixed abode.
21. The family to the accused person is willing and supportive to undertake that the accused person attends court until the matter concludes as per their probation report, however your Lady ship the details regarding the specific place of abode is not disclosed.
22. The High Court in Felix Onyango Ojeya alias Fello & another v Republic 120221KL declined to admit the accused persons to bond pending trial until when they are ready with solid evidence specifying their place of abode or where they will reside if their application was favorably considered by the court.
23. From the above compelling reasons, the Accused person is not to be admitted to bail or bond until this matter is heard and determined. Where the court is inclined to grant bail or bond, we pray for stringent bond terms.

Analysis & Determination

24. The Court considered the Application the Affidavit of Investigating Officer and Pre Bail Report.
Bail is a constitutional right enshrined in Article 49(1)(h) of *the Constitution*. The test the Court is required to use to deny bail in appropriate cases is similarly stated in Article 49(1)(h) of *the Constitution* that it is only upon the Prosecution (ODPP) showing of compelling reasons that the Court will deny bail. Section 123,123A & 124 of the CPC prescribe the relevant circumstances the Court should take into account and process of granting bail or bond.
25. The Bail & Bond Policy Guidelines of 2015 stipulate the factors that are considered in deciding to grant or not grant bail or bond to the Accused person. Current practice on application of bail or bond is informed by such non-exhaustive factors as: [Clause 4.9 (a)-(l) of the Guidelines;]

Nature of the charges, seriousness of the punishment; strength of prosecution's case.; character and antecedents of the accused; failure of accused to honor bail terms previously, likelihood of interfering with witnesses; need to protect the victim of crime and accused person; relationship between the accused and potential witnesses; age of accused if the Accused is a child/young offender; whether Accused person is a flight risk; whether accused person is gainfully employed; maintenance of public order, peace or security and protection of the Accused person.

26. In addition; at Clause 4:26 of the Guidelines;

The Court should consider in application for bail/bond whether the Accused person will attend Court proceedings, is likely to commit or abet commission of serious offence endanger lives of victims' individuals or the public; interfere with witnesses or tamper with evidence, endanger national security or if it is in the public interest to detain the Accused in custody.



27. This Court recognizes the right to bail and bond enshrined in *the Constitution* and that bail and/or bond is to facilitate the Accused person attends Court but the grant of bail and bond is considered alongside the circumstances of each case. In the instant case, The Affidavit to oppose bail/bond and ODPP's submissions point to the Accused person's likelihood to interfere with witnesses and the lack of fixed abode. The burden of proving compelling reasons not to grant bail/bond is by the Prosecution. To deny bail, the Prosecution must provide cogent evidence and not mere allegations. This was observed in the case of;

Republic Vs Danson Mgunya & another (MSA) H.C. CR. C. No. 26 of 2008;

'liberty of each person is precious ...We must interpret *the Constitution* in enhancing the rights and freedoms granted and enshrined, rather than in any manner that curtails them. Each case must be decided in its own circumstances touch and context.'

28. Where the Accused person has been provided as required by law with Witness statements and therefore, knows the identities and nature of evidence that these witnesses will adduce at trial, there is real likelihood that the Accused person would contact the witnesses and could inflict genuine fear and anxiety to potential prosecution witnesses. Republic vs Joseph Wambua Mutunga & 3 others [2010]eKLR.
29. The Accused person is presumed innocent until proved guilty at Trial. However, the statement of offence and particulars of offence suggest family ties or relationship with the Accused person in the circumstances that gave rise to the offence. It is important to ensure safety of family members; victim's family and/or neighbours at the very least until the relevant witnesses testify in trial.
30. With regard to the Accused's fixed abode, there are no details of his residence or relative to stay with address or phone number to be contacted.
31. The Defense raised issue with the fact that they were not served with Affidavit to oppose bail/bond contrary to Article 50 of *the Constitution*. This Court vide Directions of 2/7/2025 granted orders as follows;
1. The Pre-bail report to be availed to ODPP & Defense Counsel.
 2. The Counsel on record may peruse the Court file through Deputy Registrar, Criminal Division and file response to the Affidavit opposing Bail/Bond
 3. The Accused person to be taken to hospital for treatment.
 4. Pre-Trial be dealt with, defense Counsel to be served with Statements and Documentary evidence.
 5. Further Mention for Direction on 17/7/2025.
32. On 17/7/2025, Counsel for Accused person informed the Court that he had not been served with Report and the Court reiterated that Deputy Registrar was to allow Counsel access to Court file.
33. For the matters considered above, and taking into account the nature of the charges and seriousness of the punishment, the Accused person is a flight risk as he has no fixed abode, the Court is inclined to withhold grant bail and bond until crucial witnesses testify first and the Accused person makes arrangements on fixed abode and may renew the application for bail and bond.



Disposition

34. For now, bail bond Application is denied to be renewed upon physical address of fixed abode is confirmed and after crucial witnesses testify.
35. The Accused person to be taken for treatment and record filed in court.

RULING DELIVERED DATED & SIGNED IN OPEN COURT IN NAIROBI CRIMINAL DIVISION ON 24/11/2025 VIRTUALLY/PHYSICALLY.

M.W. MUIGAI

JUDGE

Mr. Mbogo for the Accused - Present online

Court – Hearing date to be taken.

