



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wambugu & another (Criminal Case E015 of 2025)
[2025] KEHC 18606 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E015 OF 2025
DR KAVEDZA, J
DECEMBER 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANDREW WAMBUGU 1ST ACCUSED

KELVIN ODHIAMBO OTIENO ALIAS HAMISI MAPENGO 2ND ACCUSED

RULING

1. The accused persons are jointly charged with the offence of murder contrary to section 203 as read with 204 (Cap 63) Laws of Kenya. The particulars of the offence are that on 14th September 2025 at Muslim Area, Dagoretti Sub-County within Nairobi County jointly with others not before court, murdered Josiah Arembi Otieno. The accused persons pleaded not guilty to the offence of murder.
2. They have approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. In response, PC Aggrey Too filed an affidavit dated 29th October 2025 to oppose bond. The averments made were that after the commission of the offence, members of the public arrested the two accused persons and subjected them to mob justice. They were rescued by police officers and taken to Mbagathi Hospital for treatment having sustained serious injuries. That the accused persons continue to face palpable and ongoing animosity from the community around Dagoretti more specifically around Muslim Area. That they face imminent danger for their lives. In addition, the 2nd accused has no known fixed abode which is a further compelling reason for the denial of bail. He urged the court to dismiss the application for bail/bond pending the hearing and determination of the case.
4. The application was canvassed by way of written submissions which have been duly considered. The issue for determination is whether there are compelling reasons to deny the accused persons reasonable bail/bond terms.



5. Article 49(1) (h) of *the Constitution* guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
6. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of *the Constitution*, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
7. The Court called for and considered pre-bail reports in respect of both the 1st and 2nd accused persons. The 1st accused is a nineteen-year-old male, unmarried and without children, with no previous convictions or prior bail or bond history. His family described him as calm, respectful and of good character, and expresses hardship occasioned by his continued incarceration. They undertake to ensure his attendance in court and compliance with any conditions imposed, proposing that, if released, he resides at the family rural home in Senende, Vihiga County, under the supervision of his mother.
8. The 2nd accused was similarly described by his family as law abiding and hardworking, with no known criminal record. They pray for lenient bond terms and propose that, if released, he resides at the family rural home in Surungai, Kakamega County, where his mother undertakes to ensure his attendance in court and compliance with all conditions set by the Court.
9. The Court has also considered the victim impact statements. The deceased, Josiah Arembi Otieno, was a thirty one year old married man, a father of one, and the sole breadwinner of his family. His parents, spouse and sibling recount profound emotional, psychological and financial hardship arising from his death. The deceased’s mother spoke of deep grief, deteriorating health of the victim’s father, and the financial burden of supporting the widow and infant child. His wife described shock and emotional devastation following the loss of her husband. The family strongly objects to the grant of bail or bond to either accused, citing fears of flight, interference with witnesses and the interests of justice.



10. The views of local administration and the investigating officer were equally considered. While the Area Chief from the rural home of the 1st accused attested to his good conduct and recommended bail, local administrators in Kangemi stated that they could not vouch for the accused persons and warned that release could provoke community unrest, recommending relocation if bail were granted. A village elder from the rural home of the 2nd accused described him as well behaved in his youth but could not speak to his current character. The investigating officer strongly opposed bail for both accused persons, citing high flight risk, public hostility and serious safety concerns for the accused, law enforcement and the community.
11. The social inquiry further reveals that neither accused has any prior bail or bond history. Although rural residences were identified, the accused persons' places of residence in Nairobi could not be independently verified. Of particular concern is the heightened agitation and hostility within the community, demonstrated by the fact that one of the accused was rescued by police officers from an angry mob at the time of arrest. This incident is not isolated, but indicative of an ongoing and real threat to the personal safety of the accused persons should they be released.
12. In balancing the constitutional right to bail against the existence of compelling reasons, the Court is satisfied that the prevailing security situation is a decisive factor. The probation report is clear that the community remains unwelcoming and hostile to the accused persons, and that their release would expose them to a real risk of harm. The Court is not persuaded that such risk can be adequately mitigated at this stage through bail conditions alone. Accordingly, and for the protection of the accused persons and the integrity of the trial process, the Court finds that compelling reasons have been established.
13. Accordingly, the 1st and 2nd accused persons application for bail is dismissed at this stage.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF DECEMBER 2025

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Timoi for the Prosecution

Mr. Momanyi for the 1st Accused

Mr. Kamondo for the 2nd Accused

Karimi Court Assistant.

