



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mogaka v Republic (Criminal Case E020 of 2025)
[2025] KEHC 18733 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E020 OF 2025
TW OUYA, J
DECEMBER 18, 2025**

BETWEEN

JACKSON ONYIEGO MOGAKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Jackson Onyiego Mogaka, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars allege that on 8th of August, 2025, at Hinguu village, Kanderendu Location in Kigumo sub-county within Murang'a County, the accused, murdered Damackline Kwamboka Morara. He was arraigned before this court for plea taking and he denied the charges.
2. Vide a Notice of Motion dated 26th of November, 2025 the accused has applied to this court, seeking to be admitted to bail or bond on reasonable terms, pending his trial, on grounds that the offence he has been charged with is a bailable offence; that his family members are not opposed to his admission to bail or bond; that there are no compelling reasons for denying him bail; and that he is ready to abide by the bond terms that this court will find suitable.
3. The application for bail was not opposed by the state.
4. Upon considering the application, I note that the contents of the pre-bail report filed before this court on 17th November, 2025 is a recommendation that the accused is not suitable for bond bail at this point in time.
5. The issue falling that commends itself for determination in this application therefore is whether there exist compelling reasons to warrant denial of the accused's constitutional right to bail or bond pending trial.



6. It is trite under Article 49 (1) (h) of *the Constitution* of Kenya, that an arrested or accused person has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there were compelling reasons not to be released.
7. The phrase compelling reasons was defined by the Court of Appeal in the case of Michael Juma Oyamo & another Versus Republic (2019) eKLR; in which the court cited with approval the High Court decision in Republic versus Joktan Mayende and 3 Others Criminal Case No. 55 of 2009; wherein the phrase compelling reasons was defined as follows: “The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”
8. That said, Section 123A (2) of the Criminal Procedure Code as read with The Judiciary Bail and Bond Policy Guidelines 2015 paragraph 4.26 provide guidance on the factors courts should consider when exercising their discretion in deciding whether or not compelling reasons have been advanced to justify denial of bail or bond pending trial. These factors include the following;
 - i. Whether the accused is likely to fail to attend court proceedings;
 - ii. Whether he was likely to commit or abet commission of a serious offence;
 - iii. Whether he was likely to endanger the safety of victims, individuals and the public;
 - iv. Whether he was likely to interfere with witnesses or evidence;
 - v. Whether he was likely to endanger national security or
 - vi. whether it was in the public interest or accused’s own safety to detain him in custody.
9. In the present case, I have noted from the pre-bail report filed before this Court that the accused does not have a fixed place of abode within the jurisdiction of this Court; as he neither hails from Murang’a County nor has he demonstrated strong social ties within Kanderendu Sub-location, Murang’a County, where the alleged offence was committed and where he was working as a casual labourer.
10. I have further noted from the pre-bail report that, although the accused may be tempted to return back to Kanderendu Sub-location upon his release on bail or bond, as it is where he previously resided and worked; and although members of the community in the said area, did not oppose his release on bail or bond pending trial, they nevertheless expressed to the probation officer that the accused should not return to the community, as the offence he is alleged to have committed is still fresh in their minds.
11. It is therefore evident that the safety of the accused may not be guaranteed should he be released on bail and return to the locus in quo.
12. Whereas the accused had indicated in the pre-bail report that should he be released, he shall reside with his uncle in Nairobi; the accused person has not given details of the said uncle, including his name and where in Nairobi he resides. The said uncle should have sworn an affidavit to indicate his willingness to accommodate the accused during this period, he in that regard, indicating his willingness to accommodate the accused and ensure his court attendance whenever he is required to do so.
13. This court is therefore inclined to deny the accused bond at this time on the basis that the accused has not demonstrated that he has a fixed place of abode, and that his security and safety may not be guaranteed should he return back to the locus in quo, where he previously resided and worked.



14. Resultantly, I find that there exist compelling reasons to warrant denial of bail or bond to the accused pending his trial.

DATED, SIGNED AND DELIVERED PHYSICALLY THIS 18TH DAY OF DECEMBER, 2025.

HON. T. W. OUYA

JUDGE

For Applicant.....Ndonga

For Respondent.....Muindi

Court Assistant.....Brian

