

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL CASE NO. E009 OF 2022**

**GEORGE KIMANI NGIGI.....3<sup>RD</sup>**  
**ACCUSED/APPLICANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

**RULING**

- 1.The accused, jointly with others, was arraigned before this court with a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the night of 16<sup>th</sup> and 17<sup>th</sup> March, 2022, at Mabanda shopping centre, within Gatanga south sub-county, within Murang'a county, the accused murdered Charles Wanyioke Kariuki.
- 2.The accused person took plea and denied the charges. Thereafter his learned counsel made an application for his admission to bail or bond pending the hearing and determination of his case.
- 3.His application for bail or bond pending trial was allowed by this court (*Wakiaga, J*) vide a ruling dated 17<sup>th</sup> May, 2023. However, from the records of this court, the accused persons bail terms were cancelled on 4<sup>th</sup> March,2024, after the person standing surety for him applied to be discharged and was so discharged.
- 4.By a Notice of Motion dated 21<sup>st</sup> June, 2025, the applicant through his learned counsel Lilian Marion Associate, once again made a fresh application to be admitted to bail or bond on favourable terms pending the hearing and determination of his case.

5. The application is premised on eight (8) grounds which can be summarized as follows: that the accused has a constitutional right to be admitted to bail pending his trial; that there are no compelling reasons to deny him his right to bail; that the accused has the right to be presumed innocent until proven guilty; that he has a fixed place of abode, and he is therefore not a flight risk; and that he is ready and willing to abide by any term this court will set as a precondition to his admission to bail or bond.
6. The application is supported by a supporting affidavit sworn by the accused on 21st June 2025, in which he reiterated the grounds in support of the application and deponed that he is entitled to the constitutional presumption of innocence until proven guilty, and that he lacks both the capacity and the intention to interfere with the prosecution witnesses.
7. The fresh application for bail was not opposed by the state on grounds that there were no compelling reasons warranting the denial of bail to the accused. *Mr. Mwangi* learned prosecution counsel however urged this court to release the accused on the same bond terms granted to his co-accused.
8. That said, whereas under Article 49 (1) (h) of the Constitution, an accused person has the right to be admitted to bail or bond on reasonable terms pending his trial, the said right is not absolute, and can be denied where there are compelling reasons not to release the accused.
9. In the present case, I note that although the accused had been admitted to bail or bond pending trial, he failed to attend court on two occasions, namely 15th January 2024 and 27th February 2024, which failure prompted the issuance of a warrant of arrest against him. Subsequently, on 4th March 2024, his surety applied to be discharged on the

ground that the accused had persistently failed to attend court when required.

10. It is important to note that the primary consideration in an application for bail, is whether the accused will attend his trial for the charges facing him should he be released on bail or bond. This position was reiterated in the case of **Kelly Kasses Bunjika versus Republic (2017) eKLR**; as follows:

***“It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused person is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond.”***

11. The accused explained his failure to attend court while on bail by stating that he was unaware of the dates when the matter was scheduled to proceed. However, I am not persuaded that this explanation constitutes a reasonable excuse, particularly in light of the fact that his co-accused, who is similarly out on bail, has consistently attended court as required. The accused was under a duty to exercise due diligence to ascertain the hearing or mention dates of his case, and his failure to do so cannot be excused.

12. That said, seeing that there are no compelling reasons to deny the accused person bail; the accused shall be released on the following bond terms:

- i. ***Bond of Kenya Shillings five hundred thousand (Kshs. 500,000) with one surety of a similar amount;***
- ii. ***In the alternative, cash bail of Kenya Shillings Two Hundred Thousand (Kshs.200,000) with one surety of similar amount;***

- iii. ***Upon release, the accused shall report to his local assistant chief immediately and shall be reporting to the same once every last Thursday of the month, and shall so report until the final determination of this case. The Assistant chief shall file a report thereon tot the Deputy Registrar of this court at the beginning of each subsequent month.***
- iv. ***In default of any of the terms above, the bond shall stand cancelled without any further court order.***

**DATED, SIGNED AND DELIVERED PHYSICALLY THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. T. W. Ouya  
JUDGE**

**For Applicant.....Githinji  
For Respondent.....Murira  
COURT ASSISTANT.....Brian**