



**PMM v Republic (Criminal Case E034 of 2022)  
[2025] KEHC 18770 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18770 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E034 OF 2022  
TW OUYA, J  
DECEMBER 18, 2025**

**BETWEEN**

**PMM ..... APPLICANT**

**AND**

**REPUBLIC ..... PROSECUTION**

**RULING**

1. The accused, PMM, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 13<sup>th</sup> of November, 2022, at Kirungu village, Mathioya sub-county within Murang'a county, the accused murdered Rahab Nyambura Muchori.
2. The records of this court reveal that the accused was first arraigned before this court on 1<sup>st</sup> December, 2022, for plea taking. He could however not take plea on the said date, as a mental assessment report from Murang'a Level 5 Hospital dated 30<sup>th</sup> November, 2022, indicated that he was not mentally fit to stand trial.
3. However, on the 3<sup>rd</sup> of April, 2024, the accused was finally declared fit to stand trial and on the 2<sup>nd</sup> of April, 2025, he was arraigned before this court for plea taking where he denied the charges. His learned counsel, Mr. Nyamu, then made an oral application to have the accused admitted to bond pending his trial. This court however gave directions that the accused through his learned should make a formal application to be admitted to bail or bond pending his trial.
4. The accused has applied to this court vide a Notice of Motion dated 7<sup>th</sup> April, 2025, seeking to be released on bail or bond on reasonable terms pending the conclusion of his trial, on grounds that he has been in remand from the year 2022; that he suffers from hypertension, diabetes and Schizphrenia affective disorder; that his brothers were ready and willing to post his bail; that his brothers are willing to take him in and assist him in reintegrating into society and ensure that he takes his medication,



- reports to Kiria-ini police station, and ensure that he has no communication with any members of the deceased family.
5. The application was argued orally before this court on 18<sup>th</sup> June, 2025. Mr. Mwangi learned prosecution counsel opposed the application for bail on grounds that there was a likelihood that the accused would interfere with some of the prosecution witnesses who were his close family members. Mr. Nyamu, learned counsel for the accused on his part, relied on their application dated 7<sup>th</sup> April, 2025, together with the joint affidavit of even dated sworn by the brothers of the accused.
  6. I have carefully considered the application and the brief oral submissions by the learned prosecution counsel opposing the admission of the applicant to bail. I have also duly considered the contents of the pre-bail report filed before this court on 3<sup>rd</sup> July, 2024. Having done so, I find that the main issue for determination before this court is whether the prosecution has established compelling reasons, warranting the denial of bail or bond to the accused pending his trial.
  7. It is trite that under Article 49 (1) (h) of the *Constitution* of Kenya, 2010, an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. Article 49 (1) (h) of the *Constitution* stipulates as follows: “an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
  8. It is also trite that whereas an accused person has a constitutional right to be released on bail or bond pending trial, the said right is not absolute and may be curtailed where the prosecution demonstrates the existence of compelling reasons warranting denial of that right.
  9. What constitutes compelling reasons was discussed in the case of *Republic v Francis Kimathi* (2017) eKLR; where the court expressed itself as follows: “There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the *Constitution*.”
  10. This court is therefore minded of the factors that should guide when considering an application for bail or bond pending trial as contained in Section 123A (2) of the Criminal Procedure Code that:

“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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
    - b. should be kept in custody for his own protection.”
  11. Further to the above, The Judiciary Bail and Bond Policy guidelines, 2015, at page 25, paragraph 4.26, also provides for the factors that could persuade the courts to deny an accused person bail or bond pending his trial to include:
    - a.) That the accused person is likely to fail to attend court proceedings; or
    - b.) That the accused person is likely to commit, or abet the commission of, a serious offence; or



- c.) That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
  - d.) That the accused person is likely to endanger the safety of victims, individuals or the public; or
  - e.) That the accused person is likely to interfere with witnesses or evidence;
  - f.) That the accused person is likely to endanger national security; or
  - g.) That it is in the public interest to detain the accused person in custody.
12. In the instant case, the sole reason advanced by the prosecution to deny the accused person bail, is that there is a likelihood of the accused interfering with some of the prosecution witnesses, especially those who are his close family members.
13. As was settled in the case of *Republic versus Dwight Sagaray & 4 others (2013) eKLR*; and *Republic versus Joktan Mayende & 3 others [2012] eKLR*; for the prosecution to succeed in persuading any court that an accused person is likely to interfere with prosecution witnesses, it must place material before the said court to demonstrate the said interference, be it actual or perceived. It is not enough for the prosecution to merely state that the accused person is likely to interfere with witnesses, they must adduce before court evidence of the alleged interference.
14. Having considered the material placed before this and records of the trial court, and it is evident that some of the key prosecution witnesses in this case have a close familial relationship with the accused persons as they are his own biological brothers; as such the allegation by the prosecution that the accused may interfere with the said witnesses cannot be said to be farfetched, considering that one of the factors that would lead the court to assume that there is a likelihood of witness interference is if the accused and the prosecution witnesses have a close familial relationship.
15. I am therefore of the view that it would not be in the interest of justice if the accused is released to the custody of his three (3) brothers, two of whom are key prosecution witnesses in this case. I say so because whereas the accused may not interfere with the said witnesses by issuing threats or intimidations, if released to them, the accused and his brothers will most likely spend a considerable amount of time together and his presence may directly or indirectly influence the said witnesses to give evidence in a particular way or it may influence them not to give evidence at all; thereby jeopardising the prosecution's case.
16. Considering also that the brothers of the accused reside in the same place as the accused, which is also the locus in quo, it would not be prudent to have the accused back in the same area; especially because the family of the victim resides in a neighbouring village.
17. That being said, I noted that the accused has been in custody since 2022. I have also noted from the pre-bail report filed in court on 3<sup>rd</sup> July, 2024, that the son of the accused, Joseph Mwangi, who resides in Nairobi, had indicated that he was willing to host the accused while he is out on bail or bond and also to ensure that he takes his medication and attends court as and when he is required to.
18. This court takes cognisance 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."



19. I therefore proceed to grant the bond 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.....Ndonga

For Respondent.....Muindi

Court Assistant.....Brian

