

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**MISC. CRIMINAL APPLICATION NO. E185 OF 2025**

**PROSECUTION .....**  
**.....REPUBLIC**

**VERSUS**

**EBEL                      OCHIENG'                      alias                      DAVE**  
**CALO.....ACCUSED/APPLICANT**

**RULING**

1. The accused was jointly charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code, Cap 63 Laws of Kenya. The accused took plea and pleaded not guilty to the offence of murder. The accused's initial application for bail was dismissed by this court on 14<sup>th</sup> August 2025. He has now lodged a second application for bail dated 25<sup>th</sup> September 2025, alleging changed circumstances.
2. The application is supported on the grounds that the allegations against the applicant remain speculative, as this Honourable Court is fitted with CCTV and recording systems which could have verified the claims but were not produced. The applicant states that he had no prior or subsequent association, dealings, or relationship with the co-accused. He further avers that he became aware of the alleged Cabreeze gang for the first time during the proceedings before this court.
3. The applicant depones that he suffers from chronic asthma, severe allergies, and a fungal infection, and has required repeated treatment at Kenyatta National Hospital while in remand. He also has a physical disability, with only three

functional fingers, which significantly limits his independence and personal hygiene. This condition has been exacerbated by incarceration. Medical records from Kenyatta National Hospital are annexed.

4. He further states that he is married with school-going children who are wholly dependent on him for their upkeep and education, and whose welfare is gravely prejudiced by his continued incarceration. He also supports vulnerable children from disadvantaged backgrounds, whose education has been disrupted by his detention. The applicant avers that he is the family breadwinner and that his detention undermines the protection of the family unit under Article 45(1) of the Constitution.
5. He resides in Nairobi and undertakes not to interfere with witnesses or obstruct justice. He is willing to comply with any bail conditions the court may impose. No prejudice will be occasioned to the respondent if bail is granted.
6. The application was canvassed by way of submissions which have been duly considered and there is no need to rehash them.
7. The present motion is framed as a renewed application grounded on alleged changed circumstances. In substance, however, it is an invitation to this Court to sit on appeal over its earlier, reasoned rulings on bail. That approach is impermissible.
8. A renewed bail application is not an avenue to re-argue matters already conclusively determined, nor to invite the Court to take a different view on the same facts. The threshold is strict. The appellant bears the initial burden to demonstrate a genuine, material, and demonstrable change in circumstances occurring after the earlier ruling.

9. The law on this point is settled. In **R v Diana Suleiman Said & Another [2014] eKLR**, E Mureithi J held:

*“The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue... In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail...”*

10. What emerges clearly is that repetition, regret, apology, or disagreement with the court’s factual findings do not amount to changed circumstances. In the present case, the factors that informed denial of bail remain intact. The Court previously found a real likelihood of interference with witnesses, intimidation within the courtroom itself, and public interest. These findings were based on conduct attributable to the applicant and on evidence placed before the Court.

11. Nothing on record, has been indicated that would neutralise the broader and continuing risk identified by the Court. The application therefore seeks to reopen settled issues without satisfying the legal threshold for review.

12. Accordingly, the motion is properly characterised as an appeal disguised as a renewed application and is devoid of merit and is dismissed.

Orders accordingly.

**Ruling dated and delivered virtually this 18<sup>th</sup> day of December 2025**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**

Mr. Wanyanga for the Accused

Ms. Gichui for the Prosecution

Mr. Apollo Mboya for the Victims

Karimi Court Assistant.

ORIGINAL