



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ndung’u & another (Criminal Case E014 of 2025)
[2025] KEHC 18706 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E014 OF 2025
LN MUTENDE, J
DECEMBER 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ATHANACIUS NDUNG’U KAMAU ALIAS NDUNG’U WA

GATWAGO 1ST ACCUSED

KEVIN WANJOHI KARORI MUIGAI ALIAS KEVO 2ND ACCUSED

RULING

1. Athanacius Ndung’u Kamau alias Ndung’u wa Gatwago, 1st Accused and, Kevin Wanjohi Karori Muigai alias Kevo, 2nd Accused are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on the 21st day of May, 2025, at Muthengera area within Nyahururu Sub-County, in Laikipia County in the Republic of Kenya jointly with others not before court murdered Joseph Ngeche Manga.
2. Both Accused have denied the information therefore seek to be released on bond pending trial. It is urged that the Accused are a flight risk as nothing has been presented to show that they will not turn up for trial and or comply with bail/bond terms.
3. Pursuant to the provisions of Section 9 and 10 of the *Victim Protection Act*, this court sought the input of the Probation Officer who filed a pre-bail report that the Prosecution seeks to rely on. However, it is the argument of the defence that these are mere allegations.
4. According to the report filed, the 1st Accused, aged 33 years is perceived as a threat to witnesses as he is known to be violent when drunk and has allegedly threatened his own father on several occasions. However, his father a village elder is ready and willing to bail him out using his title deed.



5. The victim's family however opposes the release of the 1st Accused on bail citing concerns for their safety and well-being. They fear that the accused may attempt to intimidate them if released on bond given the gravity of the offence.
6. The 2nd Accused is stated to be 25 years old. He has a physical injury on the leg, has a metal implant on the leg and is undergoing therapy. To a great extent his movements are limited. His family is willing to post bond for him.
7. The community at Muthengera have mixed sentiments about him. Those at Sigoi Village his home area are positive to his conduct while those at the Trading Centre are of the view that he is aggressive and they are intimidated by his huge body size and voice intonation.
8. The investigative agency in the locality view him as a flight risk as he has no family of his own within the locality. That he stole from his brother and the matter was resolved amicably. And, he was considered a security risk.
9. The victim's family opposed the 2nd Accused's release on bond citing flight risk tendency and safety concerns.
10. It is the finding of the Probation Officer that the 2nd Accused ekes a living through casual electrical maintenance. That the Accused allegedly sustained a gun shot wound during arrest and his release on bond would enable him seek specialized treatment of his leg at AIC Kijabe Hospital.
11. I have considered rival submissions. It is an accused person's right to be released on bond pending trial unless circumstances exist that require his incarceration during trial. Article 49(1)(h) of [the Constitution](#) provides thus;
 - (1) An arrested person has the right--
 - (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
12. Although [the Constitution](#) and statute are silent on what exactly the circumstances that amount to convincing or persuasive enough to make the court deny the Accused bail; In *Republic v Joktan Mayende & 3 Others* [2012] KEHC 5551 (KLR) the court stated that;

“.....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 standard set by [the Constitution](#).”
13. The Judiciary Bail and Bond Policy Guidelines, 2015, pg. 25 sets applicable procedure to the question of bail. It provides for circumstances under which an accused person may be denied bail thus;

The following procedures should apply to the bail hearing:

 - a. The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - b. That the accused person is likely to fail to attend court proceedings; or
 - c. That the accused person is likely to commit, or abet the commission of, a serious offence; or



- d. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - f. That the accused person is likely to interfere with witnesses or evidence; or
 - g. That the accused person is likely to endanger national security; or
 - h. That it is in the public interest to detain the accused person in custody.”
14. Section 123A of the Criminal Procedure Code provides;
- (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - (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 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.
15. All these culminate into the fact that an accused can only be denied bail if the State/Prosecution proves existence of compelling reasons. In *Ng'ang'a v Republic* [1985] KLR 451 Chesoni J. (as he then was) stated thus;
- “1. The court, in exercising its discretion to grant bail to an accused person under Section 123(1) or (3) of the Criminal Procedure Code (Cap 75), should consider the following factors:
 - a. In principle, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:
 - i. The accused will fail to turn up at his trial or to surrender to custody;
 - ii. The accused may commit further offences; or
 - iii. He will obstruct the course of justice.”



16. In the instant case the Accused are stated to be likely to interfere and/or intimidate the victim's family. If indeed the Accused persons are capable of interfering and/or intimidating the family of the deceased, and, further, if the family members are witnesses then there is a substantial and credible risk incase they are released. It is for this reason that there should be cogent evidence of the likelihood of existence of threats to that effect. For influencing witnesses obstructs the cause of justice.
17. Notably, the Prosecution did not place before the court evidence of the previous conduct of the accused which may have been likely to recur. The Probation Officer alluded to the 1st Accused being aggressive upon consuming alcohol and he would harass his father who was ready and willing to accommodate him and support him as well. There was need of affidavit evidence to confirm the allegations which was not forthcoming.
18. Article 50(2)(a) of *the Constitution* provides;
 - (2) Every accused person has the right to a fair trial, which includes the right—
 - a. to be presumed innocent until the contrary is proved;
19. An Accused person is guaranteed the right to be presumed innocent until found guilty by a court of law. It would be wrong for an individual to be subjected to pre-trial detention that is why there is need to balance the right of the accused person and that of the victim.
20. It is alleged that the 2nd Accused is a flight risk. The offence in issue is serious such that the seriousness may entice one to escape if released on bond. It therefore behooved the prosecution to present evidence demonstrating that he will not turn up for trial. The accused has ties to his family. It has not been suggested that he has a history of absconding. It is alleged that he allegedly sustained a gunshot wound but no police officer has come forth to tell the court what transpired that the Accused was wounded.
21. The upshot of the above is that the Prosecution has not demonstrated the viability of the allegation that the Accused persons herein may not turn up for trial. In the premises, I grant each Accused bond of Kshs.500,000/- with a surety in an even sum.
22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF DECEMBER, 2025.

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L.N. MUTENDE

JUDGE

