

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. E050 OF 2025

REPUBLIC.....

PROSECUTOR

VERSUS

EVERLINE KHAVETSA ATILA.....

ACCUSED

RULING

1. The accused, Everline Khavetsa Atila, is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars are that on 16th December 2022 at around 0600 hours at Muhoroni area within Kakamega County, jointly with others, was charged with murdering Were Wanakacha. She pleaded not guilty on 31st July 2025 and subsequently, she has applied to be released on reasonable bond terms pending the hearing and determination of her trial.
2. The court is guided by the pre-bail report filed by the probation officer filed on 10th December 2025.
3. The law relating to bond pending trial was espoused in the case of **Maalim v Republic (Criminal Case E001 of 2022) [2022] KEHC 13266 (KLR)**, where the court stated:

“It is settled law that under article 49 (1) (h) of the Constitution, a person who has been arrested has a right to be

released on bail or bond on reasonable conditions pending a charge or trial unless there are compelling reasons against such release. A reading of this constitutional provision leaves no doubt that this right is guaranteed to every arrested or accused person irrespective of the seriousness of the offence charged. As correctly pointed out by the accused person in his supporting affidavit, the constitutional right to bond or bail pending trial is qualified not absolute as it is subject to existence of compelling reasons. The Constitution has not defined what constitutes compelling reasons. This is left for determination by the trial court depending on the circumstances of each case.”

4. The right to bail or bond is a fundamental constitutional guarantee. Article 49(1)(h) of the Constitution provides that an arrested 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.

“49. (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.”

5. However, this right is not absolute. The court of appeal in **Michael Juma Oyamo & Another V Republic, [2019] eKLR** has given

guidance on what would amount to compelling reasons to warrant denial of bond pending trial. The court stated 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. It is trite that the duty to demonstrate existence of compelling reasons lies squarely on the prosecution in cases where the state is opposed to the admission of an accused person to bond or bail pending trial. To discharge this burden, the prosecution must support with evidence the reasons advanced in opposition to grant of bond or if what is relied on is the commonly cited reason which is what has been advanced in this case that if released, the accused is likely to interfere with witnesses or that his safety may be compromised, the prosecution must place before the court material to demonstrate that their fear is well founded and justified. Mere allegations cannot suffice.”

Analysis

6. In the case of **Republic vs Danfornd Kabage Mwangi [2016] eKLR**, the court held in part that:

“Granting bail entails the striking of a balance of proportionality in considering the rights of the applicant who is presumed innocent at this point on the one hand, and the public interest on the other. The cornerstone of the justice system is that no one will be punished without the benefit of due process. Incarceration before trial, when the outcome of the case is yet to be determined, cuts against this principle. The need for bail is to assure that the accused person will appear for trial and not to corrupt the legal process by absconding. Anything more is excessive and punitive...”

7. Bail terms should not be too lenient to encourage absconding or too stringent to frustrate the main objective of Article 49 (1)(h).
8. In the case of **Republic vs Wambugu Neutral citation: [2023] KEHC 19068 (KLR)** this court held that ,

“The Bail and Bond Policy Guidelines provide that ‘...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial. Conversely, bail or bond

amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing.”

9. On the nature of the charge, the accused faces a charge of murder, which is a serious offence. Upon conviction, the prescribed penalty is life imprisonment. The seriousness of the charge and the severity of the attendant penalty are factors that heighten the incentive for an accused person to abscond. This court has previously held that facing such a grave charge is a relevant consideration in assessing flight risk. However, standing alone, the seriousness of the charge cannot constitute a compelling reason to deny bond.
10. The pre-bail report has presented a favorable assessment of the accused's character and standing. She is 35 years old, has seven children, including a mentally handicapped minor, and is described as coming from a strong and supportive family background. Her family has proposed a stable alternative residence for her. Crucially, local leaders communicated that she is of good reputation, lived in harmony with her in-laws, and was a long-term resident of the area. The community expressed no objection to her release.
11. This profile stands in contrast to cases where bond was denied due to the accused being a habitual offender, having poor community ties, or being considered a nuisance or security threat. The accused before this court does not fall into this category.

12. The primary objection from the victim's family as voiced by the accused's brother-in-law is that she is a flight risk because she allegedly fled the area to evade arrest after the incident.
13. The accused's account, as recorded in the pre-bail report and her statement, is that on the night of the incident, she hid in a sugarcane plantation with her children out of fear of the mob and returned hours later. She was arrested nearly three years after the alleged offence, on 28th July 2025. The prosecution has not provided any evidence to contradict her explanation for her whereabouts or to demonstrate that she actively evaded arrest. Her strong family support, stable proposed residence, and expressed willingness to have her brothers secure her bail significantly mitigate the alleged flight risk.
14. The brother-in-law also opposes bond on cultural grounds, stating cohabitation in the same compound is a bad omen. While this indicates familial tension, it does not translate to a tangible risk of witness interference. The pre-bail report contains no assertion from any potential witness that they fear intimidation from the accused. The objection is personal and cultural, not evidential. Where such fears are speculative and not corroborated by witnesses or evidence, they do not amount to a compelling reason.
15. A relevant factor is whether the release of the accused would endanger their own safety or breach public peace. Here, the local leaders and community have expressed no safety concerns regarding

her release. The reported hostility is from the victim's immediate family, not the wider public. The accused's own home was destroyed by her brother-in-law in 2024, forcing her to relocate. This indicates a risk to the accused, not from her. In such a scenario, the proposed alternative residence away from the victim's family adequately addresses this security concern.

Conclusion

- 16.** Having weighed all factors, I find that the prosecution has not demonstrated any compelling reason to justify denying the accused her constitutional right to bond.
- 17.** Nonetheless, to balance her right to liberty with the interests of justice and ensure her attendance in court, the grant of bond will be subject to strict conditions.

Orders

- 18.** The application for bond by the accused, Everline Khavetsa Atila, is hereby granted.

19. The accused shall be released upon executing a personal bond of KSh. Five hundred thousand (KSh. 500,000) with one surety of a similar amount.
20. As additional conditions, the accused shall:
 - a. Reside at the alternative residence proposed by her family and not change residence without prior leave of the court.
 - b. Present herself at the Kakamega Central Police Station every first Monday of the month.
 - c. Not make any contact, directly or indirectly, with any of the prosecution witnesses, particularly the family of the deceased.
21. Any breach of these conditions will result in the immediate cancellation of the bond, and a warrant for her arrest shall issue.
22. Hearing 18.5.2026.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 15TH DAY OF DECEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms. Owuor Bush holding brief for the Accused present.