

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE E013 OF 2025

REPUBLIC
ODPP

-VERSUS-

BRIAN MURAGE MUTHONI **1ST**
ACCUSED

DENNIS NJOROGE GITHINJI **2ND**
ACCUSED

GIBERT YOUNG RATEMO **3RD**
ACCUSED

ALLAN KIBAKI ROBERT **4TH**
ACCUSED

JOHN KINYUA GACHIHI **5TH**
ACCUSED

RULING

1. This is a Ruling on Bond application made by all accused persons. The accused's were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of the offence being that on the night of 2nd and 3rd September 2025 at Gaikuya area in

Mathira East sub-county, within Nyeri County in the Republic of Kenya, murdered Joe Njiri Murigu *alias* Rukwaro.

2. The accused persons appeared before me on 23.10.2025 after the Presiding Judge referred the matter on 16.10.2025. After preliminaries were carried out, a plea was taken on 23.10.2025, for the first, third, fourth, and fifth accused. The second accused's plea was taken later, after he was medically examined and found fit to stand trial.
3. There was an animated plea that the accused be released on bond pursuant to Article 49(h) of the Constitution. The third accused relied on the case of **Republic v Zacharia Okoth Obado [2018] KEHC 4109 (KLR)**. The state opposed release on bail. They prayed for time to file an affidavit. It was stated that there was danger to the spouse of the deceased herein. The state sought time to file the affidavit, which was strenuously opposed. Reference was placed on the presumption of innocence and the bail and bond policy guidelines.
4. The accused prayed that the application was not made in good faith. It was drawn to the attention of the court that injuries to the second victim have no nexus to the accused.

5. In response to the Application for bail, the Investigating Officer filed an Affidavit sworn on 29.10.2025 opposing the bail on the following grounds that:

- a) Following the murder of the deceased, the motor vehicle, mobile phone, and household items namely, electronics and other appliances were discovered having been stolen.
- b) The investigations established that the 4th accused herein, Allan Kibaki Robert, was personally known to the deceased and his family for a long time, having attended the same church at PCEA.
- c) The 4th accused went ahead and fraudulently transferred the entire property - Mavoko Town Block 12/870 measuring approximately 2.0 hectares to his name without the consent, permission, knowledge and/or authority of the deceased.
- d) Investigations further reveal that the deceased upon learning of the transfer of the entire piece of land from his name to that of the 4th accused person, confronted the 4th accused person at Starbucks hotel in Karatina and a fight ensued between them.
- e) The 4th accused person sourced for a buyer to purchase the entire parcel of land without the consent and knowledge of the deceased person at

thirteen million Kenya Shillings (Kshs. 13,000,000=/) which transaction the deceased declined.

- f) The 5th accused herein John Kinyua Gachihi is a retired surveyor who previously practiced in Nyeri and investigations reveal that he was approached by the deceased to help him revert the title deed registered in the name of the 4th accused person back to his name. The 5th accused person was to be paid one hundred thousand shillings (Kshs. 100,000/-) for the said assignment.
- g) Additionally, the title deed was duly registered in the name of the deceased with a pattern of errors on the face of the record, either the name or title number, issuing several copies barely three weeks prior to the death of the deceased. The title document was recovered in the possession of the 5th accused person.
- h) The 4th and 5th accused persons were involved throughout the process of fraudulent transfers of title deed Mavoko Town Block 12/870 to the 4th accused person and back to the deceased with a clear pattern of errors on the title deed, therefore the intention was that the title deed would not be used elsewhere.
- i) The 5th accused person approached the deceased to convince him to sell the land registration number Mavoko Town Block 12/870 at ten million shillings

(Kshs. 10,000,000/-), and the deceased declined the offer.

- j) Following a search conducted by the police officers in the course of their investigations at the home of the 3rd accused person, Gilbert Young Ratemo the stolen household items robbed of the deceased were recovered.
- k) Further, the 3rd accused's personal belongings among others his national ID, NHIF, NSSF cards were found in the deceased motor vehicle registration number KBP 007J which was abandoned in Buruburu Estate, Nairobi County.
- l) The 1st accused person Brian Murage Muthoni, 2nd accused person Dennis Njoroge Githinji and others yet to be arrested hired a taxi from Karatina town to the compound of the deceased on the material day when the deceased was murdered.
- m) One of the goons was arrested having been caught trespassing in the said compound and booked under OB Number 02/28/10/2025 at 02.30am in Gaikuyu Police post on 28th October 2025, with investigations ongoing.
- n) Considering the gravity of the offence facing the accused persons and penalty likely to be imposed, the accused persons are likely to abscond court if released on bail and bond.

- o) At the center of the murder is the dispute of ownership of the parcel of land registration Mavoko Town Block 12/870 between the deceased, the 4th and 5th accused persons respectively.
 - p) It is in the interest of justice that all the five accused persons are denied bail/ bond.
6. Mr Muhoho, for the victims, participated and opposed bail as the family did not feel secure with release. The court was aware of the remit of the victim's lawyer, as provided in **Waswa v Republic [2020] KESC 23 (KLR)**. He confirmed that the victim's wife was in court. The court noted that bail is important and sacrosanct, and, on the other hand, the protection of public interest is sacrosanct. The court ordered a pre-bail report from the probation and aftercare services. Leave was also granted to file an affidavit on the compelling reasons. I noted that the sky will not fall if a short adjournment is given. The said affidavits were to be filed within 21 days. I directed the matter to be fixed for directions on 20.1.2026.
7. When the plea was taken to the second accused later. He also applied for bond. The said applications were completed on 20.1.2026. They stated that paragraph 29 is speculation. Mr. Kimani, for the 5th accused, argued that Article 50(2) (a)) the accused is entitled to a fair trial. They are also entitled to defend themselves by receiving statements and

evidence. Further reliance was made on section 123(3) and 123A of the Criminal Procedure Code.

8. We were also referred to clause 3.1(b) of the Bail and Bond Policy Guidelines. The same provides as follows:

Accused Person's Right to Liberty. Every accused person has the right to liberty. As a general rule, therefore, every accused person should not be detained, but should be released subject to his/her guarantee to appear for trial. Pretrial detention should therefore be a measure of last resort, and the criminal justice institutions should make every reasonable effort to avoid pretrial detention.

9. This is also provided in the United Nations Standard Minimum Rules for the Administration of Non-Custodial Measures, Article 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Article 13.

10. They also stated that reading OB 56, shows that the 5th accused is sickly.

11. Ms. Nyawira for the 4th Accused prayed for bond, stating that only paragraphs 7,8,11 and 14 touch her client. On the question of what was raised regarding the deceased land in the 4th accused's name, the advocate indicated that the

circumstances will come out in the trial. It was lost on the 4th accused, that this was a request to adjourn the aspect raised until it becomes clear in the full hearing. She also noted that the 4th accused person has been in pretrial custody for three months. I reserved the ruling for today.

12. Reports were filed by PACS on the questions addressed in bail and bond.

13. The report regarding Brian Murage Muthoni, a 24-year-old man from Gaterendu village indicated that he is not suitable for bail and bond. The reasons given were the safety of the secondary victim, and he is not well-known at his home. The first accused had no fixed abode or known close relatives in the family.

14. Dennis Njoroge Githinji is a 32-year-old person who dropped in form two. He works as a plumber; he is a young father. The PAC's report indicated that he is not suitable for release. No reasons were given.

15. Gilbert Young Ratemo is a 25-year-old person from Naivasha. The third accused has a family in Kabati in Naivasha. The accused person is married, has a child, and lives in Karatina. He is a stranger to the family. The family

is not opposed to his release, so long as the widow's safety is guaranteed.

16. The 4th accused, Allan Kibaki Robert, is a resident of Mathira. He has a family who are engaged in tea farming, aged 60 years. He was said to have been released on a 1-million-shilling bond when he was arrested. The PACS found him suitable. The family indicated that there is land at the centre of the dispute, which is in the accused's name.

17. John Kinyua Gachihi is a 68-year-old resident of Rititi. He is said to be sickly. He is said to have been retrenched in 2000. He is married with 5 children. The family did not interact with the accused, save for the help given to the 4th accused. It is stated that he is settled in the Ngandu area and engages in the local community.

18. The 5th accused has permanent residence. The family did not have reservations for release.

Analysis

19. The issue is whether the Accused person herein should be released on bail pending trial. This is a constitutional imperative provided under Article 49(1)(h) of the constitution as follows:

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.

20. This is buttressed under Section 123(3) of the Criminal Procedure Code as follows:

The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

21. The considerations for bail and bond are set out in Section 123A of the Criminal Procedure Code as follows:

(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 fulfilment 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;

22. The seriousness of the offence does not ipso facto cause denial of bond. This means any offence, from treason, murder, robbery with violence, terrorism is bailable. No offence is excluded, it is simply one of the considerations, which mostly goes to the quantum of the amount of bond. I therefore dismiss as idle the quest by the state simply because of the sentence that may ultimately be meted out. In the case of **Mohamood Chute Wote & 2 others v Republic [2021] eKLR** Nzioka, J. expressed herself on the Article 49(1)(h) and section 123 of the Criminal Procedure Code as follows;

The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of the Constitution of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and

bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.

23. The state is not a harmless lamb that can be rail loaded with falsehoods. It must be noted that where there are compelling reasons, it must surely know the same. In the case of **Thomas Patrick Gilbert Cholmondeley v Republic** [2008] KECA 319 (KLR), the court of appeal [R.S.C. Omolo, E. O. O’Kubasu and J. W. Onyango Otieno] addressed the relationship between the state and a criminal defendant as follows:

We would repeat these sentiments here to emphasize the point that the courts in the country in spite of their perceived previous failures, must now rigorously enforce and enforce against the state the fundamental rights and freedoms of the individual guaranteed by the Constitution. Those rights cannot and must not be allowed to be diluted by purported exercise of inherent powers by judicial officers allowing the state to claim reciprocal privileges. The state is the usual

and obvious violator against whom protection is provided in the Constitution and it ought not to be allowed to claim the same privileges. We know the good Book says that in the end of times, the lion shall graze and lie peaceably together with the lamb. But our recent history is still too fresh in our mind and we in the courts must try to keep the lion away from the lamb. In other words, there is not and there can be no question of reciprocal rights, or a level playing field or any such theory as between an accused person and the state. No statute gives the state such privileges, and the Constitution, wisely in our view, does not give the prosecutors such powers. They cannot be given through the inherent power of the court.

24. The court must disabuse the state that the accused persons are guilty of murder. They are charged with murder. They are presumed innocent until the court finds otherwise. Most oft quoted English decision of by **Viscount Sankey L.C** in the case of **H.L. (E) Woolmington vs. DPP [1935] A.C 462 pp 481** , comes in handy in describing the legal burden of proof in criminal matters, that;

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory

exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

25. The seriousness of the offence charged is important as regards the safeguards and motivations to escape. It is not a primary consideration. It must not be forgotten that persons charged with simple assaults have been convicted, while those charged with murder have been acquitted. A person should therefore not be denied bond only because the offence he is facing is a serious one. Only because there are compelling reasons not to be released. In other words, an accused has a right to be released on bond unless, due to compelling factors, he will be forced not to be released. Where there is doubt, either way, the benefit must be given to the accused.

26. Further, at Paragraph 3.1. (d) of the Bail and Bond Policy Guidelines (at page 9) it is provided that:

d) "...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. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case."

27. The court must thus balance the interests of releasing the accused on bond and the interests of Justice. The sentencing policy guidelines provide as follows:

b. Every accused person has the right to liberty. As a general rule, therefore, every accused person should not be detained, but should be released subject to his/her guarantee to appear for trial. Pretrial

detention should therefore be a measure of last resort, and the criminal justice institutions should make every reasonable effort to avoid pretrial detention.

e. On the one hand, police officers and judicial officers should endeavor to preserve the liberty of an accused person, who is presumed to be innocent and should be allowed to keep the fabric of his or her life intact by, for example, maintaining employment and family and community ties. Preserving the liberty of an accused person also permits him or her to take an active part in the planning of his or her defense. on the other hand, the state has a duty to prosecute those who commit crimes, which may entail qualifying the individual right to liberty. the state has a duty to ensure public safety between the time of arrest and trial of accused persons, and a duty to protect the integrity of the criminal justice system. This means that where there is convincing evidence that an accused person may undermine the integrity of the criminal justice system, by, for example, intimidating witnesses or interfering with the evidence, then a need arises to either deny such a person bail or bond, or set stringent bail or bond terms. equally, where there is convincing evidence that the accused person will endanger a particular

individual (for example, victims of the crime) or the public at large, or even commit a serious crime, it also becomes necessary to subject an accused person to pretrial detention. The interests of justice therefore demand the protection of the investigation and prosecution process against probable hindrance by accused persons. It is therefore important for police officers and judicial officers to appreciate that the public have an interest in the effective prosecution of offences. In appreciating the need to balance the rights of accused persons with the interests of justice, the Constitution states that an accused person can only be denied bail or bond where the court establishes that there are compelling reasons not to be released. That is, while the constitution stipulates that every accused person is presumptively entitled to bail or bond, it permits the denial of bail or bond where the prosecution presents convincing evidence to justify such denial. In denying an accused person bail or bond, it must therefore be demonstrated with convincing evidence that his or her release will present risks, and that such risks cannot be managed, even with the attachment of appropriate conditions.

28. The duty of the court is not to ignore risks. It is to ensure that the risks can be managed. Only where the risks cannot be managed will the court find that there are compelling reasons to detain the accused.

29. The right to reasonable bail and bond terms is underpinned in the **Judiciary's Bail and Bond Policy Guidelines** as follows:

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.

30. In my view, justice in bail applications also denotes justice to the Accused persons and justice to the victim of the crime served if both parties, that is, the victim and the accused, get justice. It is a two-way traffic. Like to the Accused persons, the way to the victim's justice is through a fair hearing and fair trial where witnesses are enabled to

attend court to freely testify on the truth of what they know, saw, or hear.

31. Each of the accused has different circumstances. The first accused does not have a known fixed abode and relinquished the only job that could have kept him in the place. With such scanty history, I find him not suitable for bond. His application is dismissed. The court shall reconsider if circumstances change.

32. The second accused has a fixed abode. Although the Probation and Aftercare Services (PACS) expressed a contrary view, I do not find any compelling reasons to deny him bond. In the circumstances, the second accused's application for bond is allowed. He shall be released on a sum of Ksh 500,000/= with one Kenyan surety of a similar amount.

33. The third accused has a fixed abode. The PACS report is favourable. I do not find compelling reasons to deny him bond. In the circumstances, the third accused's application for bond is allowed. He shall be released on a sum of Ksh 500,000/= with one Kenyan surety of a similar amount.

34. The fourth accused has a fixed abode. Although the Probation and Aftercare Service (PACS) expressed a view

that he should be released on bond, I noted that the one question that is at the centre of the controversy was left unanswered until trial. This leaves the question of full disclosure on the compelling reasons given by the investigating officer. The compelling reason given was not sufficiently displaced. Consequently, I agree with the investigating officer that there are compelling reasons not to grant bond to the 4th accused. Until the questions raised by the investigating officer are answered, I find compelling reasons to deny him bond. In the circumstances, the application by the fourth accused is denied.

35. The 5th accused has a fixed abode. The PACS report is favourable to him. The family has no safety concerns about him. I do not find compelling reasons to deny him bond. In the circumstances, the fifth accused's application for bond is allowed. He shall be released on a sum of Ksh 500,000/= with one Kenyan surety of a similar amount.

Determination.

36. I therefore make the following orders: -
- a. The Application for bail pending by the first accused is dismissed.
 - b. In the circumstances, the second accused's application for bond is allowed. He shall be released on a sum of

Ksh 500,000/= with one Kenyan surety of a similar amount.

- c. The third accused's application for bond is allowed. He shall be released on a sum of Ksh 500,000/= with one Kenyan surety of a similar amount.
- d. The Application for bail pending by the 4th accused is dismissed.
- e. In the circumstances, the fifth accused's application for bond is allowed. He shall be released on a sum of Ksh 500,000/= with one Kenyan surety of a similar amount.

DELIVERED, DATED and SIGNED at NYERI this 22nd day of January, 2026. Ruling delivered in open Court.

KIZITO MAGARE

JUDGE

In the Presence of:-

Ms. Kaniu and Mr. Kihara for the State.

Ms. Ndirangu for the 1st Accused.

Ms. Miriti for the 2nd Accused

Ms. Wambui Mwai for the 3rd Accused.

Ms. Nyawira for the 4th Accused.

Mr. Njuguna Kimani for the 5th Accused.

Mr. Kibicho for the Victims.

Court Assistant- Michael

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