



**Republic v Okere & 2 others (Criminal Case E001 of 2026)
[2026] KEHC 374 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E001 OF 2026
DK KEMEL, J
JANUARY 23, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS ANGAWA OKERE 1ST ACCUSED

MESHACK NDIEGE OKUKU 2ND ACCUSED

JOASH ODHIAMBO 3RD ACCUSED

RULING

1. The three accused persons herein have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 14th day of November 2025 at about 2200 hours, along Orenge- Gulmin Ougo murrum road in Bondo Sub-County within Siaya County jointly with others not before court, murdered Dennis Ambrose Achieng.
2. The accused persons denied the charges levelled against them and hence a plea of not guilty was entered against them.
3. The prosecution opposed the release of the accused persons on bond pending trial and that they relied on an affidavit of the investigating officer No. 112661 Pc Winston Obare sworn on 19th January 2026 wherein he averred inter alia; that several witnesses had earlier lodged reports of threats at Bondo police station prior to the killing of the deceased and even thereafter; that there is lethargy by Government officers in the area to enforce the law as key suspects are hiding within the population and who have been destroying properties belonging to the families of the deceased person herein; that the offence is serious and a threat to national security and peaceful co-existence within the local community as some suspects are still at large; that the 2nd and 3rd accused currently face a charge of assault vide Bondo Chief Magistrate’s court Criminal case No. E 279 of 2025; that the accused persons had earlier been taken before the Bondo CM;s court vide Criminal Misc Application No. E184 of 2025 where the Resident



Magistrate granted them cash bails pending arraignment at the Siaya High Court; that upon release, the accused persons and their associates later murdered one of the key witnesses in broad daylight on 16th January 2026; that upon the release of the accused persons, there has been tension and unrest within the locality and on social media and hence release of the accused persons on bond will worsen the situation; that the accused persons have been inciting members of public on the ground to attack or harass the witnesses who are now fearful of their lives and are in hiding; that the efforts of the prosecution to place the witnesses under witness protection will be hampered if the accused are released on bond; that it is in the interest of justice that the accused persons be remanded in custody until the remaining key witnesses have testified; that arrangements to place some witnesses under the witness protection program is underway; that a pre-bail report be filed by the probation officer as the same will reveal bring to the fore the true position of the current events on the ground; that there are compelling reasons to warrant denial of bond to the accused persons. Learned counsels for the prosecution further added that the accused persons are likely to interfere with the witnesses and further worsen the deteriorating security situation on the ground and that in the event that the court is inclined to grant bond then it should call for a pre-bail report which will give the true picture on what is happening on the ground.

4. Learned counsels for the defence countered the objections to release of accused on bond by submitting inter alia; that the offence is bail able under the provisions of Article 49(1) of *the constitution*; that the prosecution has not demonstrated how they will benefit from incarcerating the accused persons as they are not preventing them from placing their witnesses under the witness protection agency as they have had time from when the incident took place on 14/11/2025; that the police have not arrested any suspects regarding the alleged threats to witnesses; that all accused are ready and willing to abide by any such conditions to be imposed by the court.
5. Both learned counsels for the prosecution and defence agreed to have the investigating officer No.112661 Pc Winston Obare who had deponed to an affidavit opposing release of accused on bond be cross-examined and re-examined. The said deponent averred on cross-examination inter alia; that the accused persons are a flight risk; that the accused have not absconded bond upon being granted bond; that the accused persons enjoy the presumption of innocence; that nobody has been arrested over the death of the latest victim; that the accused persons have not interfered with the progress of investigations; that the abductors of the latest victim were unknown; that he has nothing to link the accused persons to the latest incident; that he does not know where the accused persons were on 16/1/2026. On re-examination, he stated inter alia; that the accused persons are a flight risk; that the cybercrime department is yet to authenticate documents; that the abductors were unknown.
6. This court later considered the rival submissions of learned counsels and directed that a pre-bail reports be availed by the County Probation officer. The same are dated 21/1/2026 and that the counsels were given an opportunity to make brief oral submissions thereon.
7. Ms Mumu and Mr Soita for the prosecution submitted inter alia; that the accused persons be denied bond as they have presented compelling reasons to that effect; that the issue of witness interference has been proved vide the several OB numbers lodged; that the probation officer in his reports has not mentioned the names of persons he interviewed during his visit; that the local administration comprised of the chief, asst chief and clan elder are the ones sabotaging the matter for the benefit of the accused persons and hence the reports are biased; that the witnesses currently live in fear of their lives; that the ground is still volatile; that the prosecution needs time to put its house in order; that in the event the court is inclined to grant bond, then it should order strict bond terms.
8. Learned counsels for the defence submitted inter alia; that the pre-bail reports are favourable for release of accused persons; that no pre-disclosure has been made and thus accused persons do not know the witnesses; that the accused persons while out on bond previously did not breach the terms; that the



prosecution has not demonstrated its eagerness and drive to accelerate the hearing of the matter so as to convince the court that the trial will not be lengthy; that no evidence has been shown to link the accused persons to the death of the witness; that the officials on the ground are government officers and that complaints against them should be channeled elsewhere and not this court; that the pre-bail reports are objective as they have taken into account both sides of the families of accused, victims and the community; that this court has the power to order release of accused persons on such terms as it deems fit such as restricted movement, reporting to DCI at such regular intervals as the court deems necessary.

9. I have given due consideration to the submissions of all learned counsels herein as well as the affidavit of the investigating officer and the pre-bail reports by the County Probation Officer. It is not in dispute that all the accused persons have denied the charge herein and hence they now enjoy the presumption of innocence until proved guilty. Under Article 49(1) (h) of *the constitution*, 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. This constitutional provision is granted to an accused person irrespective of the seriousness of the offence charge but subject to any compelling reasons to be furnished by the prosecution. Indeed *the constitution* has not given a definition of what compelling reasons are and hence the same is left to the court to determine depending on the circumstances of each particular case presented before it. The Court of Appeal in the case of Michael Juma Oyamo & Another Vs Republic [2019]eKLR held 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 to the 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.”

Again in the case of Patius Gichohi Njagi & 2 Others Vs Republic [2013] eKLR the Court of Appeal held as follows:

“...where the state opposes bail on account of any of the often-cited and commonly known fears which it routinely expresses including but not limited to the likelihood of the accused absconding and failing to attend trial; likelihood of interference with witnesses; of possibility of hostile and even violent reception of the accused by the community upon release, the state must do more. It must step out of the realm of imagination and speculation and provide the court with persuasive argument backed by facts and experiences, and circumstances unique to each individual case that would make the court appreciate the need to deny an applicant bail. As stated in the celebrated case of Jaffer Vs Republic [1973] EA 39, the court cannot be called upon to speculate.”

10. It is not in doubt that the main consideration for bail or bond pending trial is whether the accused person will turn up for his or her trial or that he will abscond. Section 123 of Criminal Procedure Code as well as the Kenya Judiciary’s Bail and Bond Policy Guidelines 2015 provide certain conditions/



factors which must be considered by the court when dealing with issues of bail pending trial and some of which include the following:

- a) Whether the accused is likely to commit or abet the commission of a serious offence;
- b) Whether the accused is likely to endanger the safety of victims, members of the public or national security;
- c) Whether the accused is likely to interfere with witnesses, investigations or evidence;
- d) Whether it is in the public interest to detain the accused person in custody.

11. It is not in dispute that when this matter came up on 19th January 2026, the parties herein were in agreement that pre-bail reports be filed so as to enable the court get the true picture of what obtains on the ground. Indeed, the investigating officer and learned counsels for the prosecution urged the court to call for such a report. The court duly called for the said reports from the County Probation Officer. The reports are dated 21st January 2026 and which have captured the concerns of the accused persons, victims' families and the local community. Further, the reports indicate that the release of the accused persons will not pose any public safety concerns in the community as the accused persons have fixed places of abode and are in gainful employment. Even though the reports indicate that the witnesses are currently living in fear, those concerns have already been taken care of by the prosecution when they indicated that they have engaged the Witness Protection Agency to put those witnesses under the Witness Protection Programme. As regards the issue whether the accused persons will attend court for their trial, it is evident that upon their release vide Bondo Misc. Application No. E184/2025 they duly appeared in court as directed and therefore there has been no evidence of absconding. The prosecution have contended that the accused persons if released are likely to interfere with witnesses and polarize the already volatile situation in the community. They have also maintained that the pre-bail reports are one sided in that the local administration relied upon by the probation officer is comprised of officials who are favouring the side of the accused persons. This court has already considered that issue and found that pre-bail reports are comprehensive as it has captured all the concerns of the accused persons, victims' families and the local community. I am satisfied that the said reports met the requisite threshold required of the probation officer. However, the concerns of the prosecution will be taken care of if the court imposes the appropriate conditions for compliance by the accused persons who have undertaken to abide by any conditions imposed by the court. I find that if the court imposes watertight bond conditions, the concerns of the prosecution will have been assuaged. In any event, any non-compliance of the conditions imposed will attract severe consequences.

12. After consideration of all the issues, it is my finding that the prosecution has not presented compelling reasons to warrant the denial of bond to the accused persons. Consequently, the following orders are hereby issued:

- i. Each accused person herein is released on a bond of Ksh500,000/= plus one surety of like sum.
- ii. Upon release, the accused persons are ordered not to contact or interfere with witnesses either directly or through proxy.
- iii. That each of the accused persons are ordered to appear before the DCIO Bondo on Monday of every week at 8.00 am starting the 26th January 2026 until investigations are concluded or until further orders of this court.
- iv. That in the event of non-compliance of these directions, the bonds shall be cancelled and they together with sureties called to account.



- v. The prosecution is directed to ensure that they serve the committal bundle to the defence within seven (7) days from the date hereof.
- vi. Mention for pre-trial conference on 10th February 2026.

DATED AND DELIVERED AT SIAYA THIS 23RD DAY OF JANUARY 2026.

D. KEMEI

JUDGE

In the presence of:

Francis Angawa Okere.....1st Accused.

Meshack Ndiege Okuku.....2nd Accused.

Joash Odhiambo.....3rd Accused.

Onsongo/Ochanyo.....for all accused persons.

Soita.....for Prosecution.

Odenyo.....Watching brief for family of deceased.

Maureen/Kimaiyo.....Court Assistant.

