



REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HIGH COURT CRIMINAL CASE 74 OF 2019
CHARLES OMONDI.....1ST
ACCUSED
KEVIN OMONDI.....2ND ACCUSED
JOSEPH OCHIENG.....3RD
ACCUSED
VS
REPUBLIC.....PROSECUTION

RULING
BAIL/BOND APPLICATION

1. The 1st Accused Charles Omondi Nyamburi (deceased) 2nd Accused; Kevin Omondi Ahija and 3rd Accused Joseph Ochieng Mayot are charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code.

2. The particulars are that on 22nd October 2019, at Kariobangi North, within Nairobi County jointly with others not before Court murdered John Ochieng Achiando.
3. On 10/3/2021 the 2 matters were consolidated HCT CR E011 of 2021 with the instant file being lead file.
4. On 24/3/2021 the consolidated Charges/Information were read to the Accused persons and each of them pleaded NOT GUILTY
5. The hearing of the matter commenced before Hon LJ L.Mutende on 2/2/2023 and 5 witnesses have testified to date.
6. During the intervening period, allegations arose and 2nd Accused Kevin Omondi Ahija explained in detail events leading to the untimely death of 1st Accused while in Custody.
7. This Court by Ruling of 29/1/2025 subjected the matter to investigations by Commissioner of Prisons and report filed in Court and served to ODPP and Post Mortem conducted in the presence

of 1st Accused person's Advocate. A Report was placed in the Court file dated 4/11/2025.

8. In the meantime, the 2nd Accused person's Advocate filed Certificate of urgency Application filed on 4/3/2025 seeking review of grant of bail bond in light of prevailing circumstances.
9. The Applicant found the Application urgent as the 2nd Accused person's life was in danger and he ought to be released from custody as he was an eye witness to the assault of 1st Accused's demise and a witness to the Prison Officer who tried to save the life of 1st Accused's life.
10. The 2nd Accused person deposed in the Supporting Affidavit that as an eye witness to the incident that culminated to 1st Accused person's death, being in custody under similar circumstances his safety and life cannot be guaranteed as they have direct control and access to him and sought to be released on such terms and conditions as the Court deems fit.
11. The Application for review of grant bail and bond terms was served to ODPP and directions

were taken on 24/11/2025 that each party was to file written submissions on the issue of bail and bond. To date and

at the time of writing the Ruling no submissions have been filed served or exchanged and/or on Court record.

12. The Ruling on bail & Bond delivered by Hon LJ D.O. Chepkwony of 9/11/2021 considered the application; Paragraph 5 referred to Affidavit by PC Paul Nyoro of DCI- Starehe who deposed that the Accused persons jointly with 8 others not before Court were said to have caused murder of deceased. The others are out at large not yet arrested; they were neighbours and interference of witnesses is possible and the Applicants/Accused persons are flight risks.

13. At Paragraph 28 of the Ruling, the Judge read witnesses statements and it is clear witnesses came from the same neighborhood as the Accused persons. In fact one of the witnesses barely escaped with his life as he was among those targeted to be killed by Accused persons.

14. At Paragraph 30, the Judge found compelling reasons were demonstrated by Prosecution to justify denial of bail/bond at this stage

15. At Paragraph 31, the Judge disallowed the bail/bond Application and the Accused persons were at liberty to review the bail application **once key**

witnesses have testified.

16. The Ruling by Hon LJ L.Mutende of 7/12/2024 Paragraph 2 & 5 , the Judge reiterated that Accomplices are yet to be arrested a fact that would result in interference with investigations and that the 3rd Accused person disappeared for 2 years prior to being arrested and he is a flight risk.

17. The Judge elucidated that the review of denied bail and bond would involve change of circumstances. So far 5 witnesses testified but 1 crucial key witness indicated as D-5 is yet to testify and the order by Hon LJ D. Chepkwony was specific and cannot be contravened.

ANALYSIS & DETERMINATION

18. Article 49(1)(h) of the Constitution provides that:-

An accused 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.

19. The considerations in determining whether or not to grant bail are set out in **Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P. 25 -4.26** which sets out judicial policy on bail/bond 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, 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.”

20. In **Republic v Diana Suleiman Said and Another [2014]** eKLR, Hon. Muriithi J observed;

“The changed circumstances test is one of a 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 interest of justice not only for the accused but also for the complainant and the society at large. 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, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused”

20. Considering the circumstances raised by the 2nd Accused person that his life safety are compromised arising from circumstances that led to the demise of the 1st Accused in custody a matter is subject of investigations and at the same time the 2 Rulings by Courts of competent, concurrent and equal and similar jurisdiction as this Court, bind this Court unless exceptional circumstances, new developments urgent situation that affect health life are at stake. The Court record proceedings of 28/1/2025 and 7/10/2025 depict the dire situation the 2nd Accused is in going by the detailed account he gave to Court of what transpired that culminated to 1st Accused person's demise. The Court ought to and shall err and act on the side of caution and ask what if and ensure life safety and security of 2nd Accused person as

Art 51 of Constitution protects bill of rights of those in custody.

DISPOSITION

- 21. The 2nd Accused person is released on bond of Ksh 100,000/- with 1 surety and /or Ksh Cash bail 50,000/- with contact person with verified ID card from National Bureau of Registration of Persons or Payslip or Chief's letter.**
- 22. The 2nd Accused person shall observe following conditions;**
- 23. The Accused person shall observe the following terms;**
 - a) The Accused person will not to interfere with witnesses/victims,**
 - b) The Accused person will not tamper with evidence,**
 - c) The Accused person will not to leave jurisdiction of the Court,**
 - d) The Accused person will not commit an offence,**
 - e) The Accused person will attend Court on all dates.**

**24. In default of conditions without lawful cause
the bail**

/bond shall be cancelled forthwith.

**25. The matter shall be mentioned in the New
Term/Year**

2026 on 2/2/2026

**DATED SIGNED & DELIVERED IN OPEN COURT AT
CRIMINAL DIVISION HIGH COURT NAIROBI ON
19/12/2025 VIRTUALLY/PHYSICALLY.**

**M.W.MUIGAI
JUDGE**