



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Republic (Criminal Case E008 of 2025)  
[2026] KEHC 1822 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1822 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E008 OF 2025  
JM OMIDO, J  
FEBRUARY 17, 2026**

**BETWEEN**

**HARON STANLEY OTIENO ALIAS FIBER ALIAS MLUNJE ..... ACCUSED**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Respondent herein opposes the grant of bond to the accused. To that end, the investigating officer Police Corporal Paul Buluma has filed an affidavit sworn on 14<sup>th</sup> April, 2025 in which he opposes the accused's grant of bond.
2. In his affidavit, Corporal Buluma states that he is an investigator attached to the Directorate of Criminal Investigations, Kisumu Central, and the investigating officer in this case in which the accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.
3. The officer explains that he is competent to swear the affidavit as authorized by the Office of the Director of Public Prosecutions and opposes the accused's release on bond.
4. Corporal Buluma avers that the accused has no known permanent or verifiable place of residence within the jurisdiction of the Court, creating a significant risk of absconding and interference with the due process of justice if released.
5. The officer further deposes that tension remains high in the area where the alleged offence was committed and that the accused is likely to face hostility from members of the public, thereby placing his safety at risk, including the possibility of mob violence.
6. Additionally, the officer contends that the nature of the alleged offence has caused considerable public outcry and unrest and that granting bond may undermine public order and erode confidence in the administration of justice.



7. For those reasons, he urges the Court to deny bond and order that the accused remain in custody pending the hearing and determination of the case.
8. Pursuant to the Court's order of 25<sup>th</sup> February, 2025, the Probation and Aftercare Service Office prepared and filed a Bail Information Report dated 1<sup>st</sup> April, 2025. A review of the report reveals that the accused has no known fixed residence and is only identified as a street boy within Kisumu City. It further indicates that his family regards him as a runaway, having left his former home during childhood.
9. The accused did not file any affidavit in response to Corporal Buluma's depositions and the contents of the bail information report. Learned Counsel for the accused person leaves the matter of bond to the court to determine.
10. I have considered the affidavit opposing the release of the accused on bond and the record in its entirety. I will proceed to address the issues that emerge for determination.
11. The first issue for determination is whether the accused person's constitutional right to be released on bond under Article 49(1)(h) of *the Constitution* can be limited on the facts of this case. Article 49(1)(h) guarantees that:

“ An accused 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.”
12. The right to bond is therefore not absolute and may only be denied if the State establishes compelling reasons that justify such denial.
13. In the case of Republic v Joktan Mayende & 3 Others [2012] KEHC 5551 (as adopted in the case of Republic v Mbai [2025] KEHC 13520 (KLR), the court explained the nature of compelling reasons as those that are “forceful and convincing ... that the accused should not be released on bond” and not merely “flimsy grounds” or conjecture.
14. Similarly, in Republic v Hashim Dagane Muhumed alias Hashim Mohamed Khalif [2025] KEHC 11301 (KLR), the court reaffirmed that where the life or safety of an accused is endangered or where other compelling circumstances exist, bond may lawfully be denied.
15. The second issue for determination is whether the prosecution has demonstrated, on a balance of probabilities, compelling reasons to deny bond.
16. The investigating officer's uncontroverted affidavit and the unchallenged pre-bail report together disclose multiple factors that, cumulatively, meet the high threshold required to deny bond: first, that the accused has no known fixed residence and is identified only as a street boy in Kisumu City; second, that there is a significant risk he may abscond if released; and third, that his safety and public order are at risk if he is granted bond.
17. These factors go beyond speculation and clearly demonstrate compelling reasons for denial.
18. The absence of a fixed abode and a verifiable address is a recognized factor that can support the denial of bond because it is directly linked to the likelihood of abscondment. Article 49(1)(h) and Section 123A of the Criminal Procedure Code require the court to consider, inter alia, the character, antecedents and community ties of an accused.
19. Lack of a fixed residence or ties within the community weighs heavily against release, as it increases the risk that the accused will not attend trial as required.



20. Further, the evidence of continued tension and public hostility in the area where the offence was allegedly committed, together with the lack of any rebuttal by the defence, creates a real and substantiated risk that the accused's release would undermine public order and expose him to harm.
21. The prosecution must prove compelling reasons for denial on admissible evidence. Here, the affidavit opposing bond and the pre-bail report are accepted on the basis that they remain uncontroverted by any opposing affidavit or evidence from the accused. In, Njiru & another v Republic [2024] KEHC 5113 (KLR), the Court confirmed that where the State provides evidence that demonstrates compelling reasons and such evidence is not rebutted, the court is justified in refusing bail.
22. The accused did not file any affidavit in response to the prosecution's matters or to rebut the investigating officer's statements. Where depositions are not controverted, the court is entitled to accept them as reflecting the true situation, particularly on matters that go to compelling reasons for denial. This absence of contest weakens any suggestion that reasonable bond conditions could safely secure attendance at trial or mitigate the identified risks.
23. From the foregoing, I find that the prosecution has proved compelling reasons to deny the accused bond. The risk of abscondment, threats to safety and potential destabilisation of public order meet the constitutional threshold for limiting the right to bond.
24. In conclusion, the accused's application for bond is hereby denied at this stage on the grounds of the above compelling reasons. The accused shall however be at liberty to renew his application for both should his circumstances, particularly those relating to the above compelling reasons, change.
25. It is so ordered.

**DELIVERED, DATED AND SIGNED THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**JOE M. OMIDO**

**JUDGE**

Accused: Present.

Prosecution Counsel: Ms. Muema.

Defence Counsel: Ms. Omollo.

Court Assistants: Mr. Ngoge & Mr. Juma.

Ms. Omollo: We intend to plea bargain.

Ms. Muema: They can send us their proposal.

Court: Mention for plea agreement on 16<sup>th</sup> March, 2026.

