



REPUBLIC OF KENYA



**Owino alias Don & another v Republic (Criminal Case E005 of 2025)
[2026] KEHC 1519 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E005 OF 2025
WM KAGENDO., J
FEBRUARY 12, 2026**

BETWEEN

MC'DONALD OCHIENG OWINO ALIAS DON 1ST ACCUSED

ALICE ACHIENG OCHIENG 2ND ACCUSED

AND

REPUBLIC RESPONDENT

RULING

1. The accused persons are charged with offence of murder contrary to Section 203 as read with Section 204 the Penal Code CAP 63, Laws of Kenya. The particulars of the charges are that the accused persons between the night of 7th February, 2025 and morning of 8th February, 2025 at an unknown time and unknown place within Mombasa County, jointly with others not before court murdered Jane Achieng Omullo.
2. On the 22nd of May, 2025 the accused persons pleaded not guilty to the charges. The prosecution intimated that the Investigating Officer would be tender an affidavit in opposition of the accused persons bail/bond, but despite this court's several directions on extension of time to comply, as at the time of making this determination the same remained pending.
3. Further, I note with concern that no bail reports were on record in support or in opposition of the suitability or lack thereof, of the accused persons release on bail or bond terms.
4. 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.



5. The compelling reasons are espoused in Section 123A of the Criminal Procedure Code which gives the parameters for the grant of the right to bail 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;
 - b. should be kept in custody for his own protection.
6. Further, the Judiciary's Bail and Bond Policy Guidelines, March 2015 at page 25 sets out the judicial policy on bail as follows:

“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:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.



7. At least one or more of the above grounds ought to be proved to the satisfaction of the court. Mere allegations or possibility is not enough. It is worth reiterating that applicants have a constitutional right to bail/bond unless there are compelling reasons why they should not. It would follow that the sole onus rests on the prosecution to avail credible reasons to that effect.
8. In this instance the prosecution failed to satisfy this Court, on a balance of probabilities, of the existence of any compelling reasons that justify the denial of bail, by dint that no opposition was raised against the same despite their intimidations that they would do so.
9. Bail cannot be refused simply because the accused persons have been charged with a very serious offence; but the seriousness of the offence can be taken into consideration as a factor in determining if one of the grounds for refusing bail exists, where the seriousness of the offence may increase the risk that the accused will fail to appear for their trial.
10. As earlier stated, burden of proving to the court that one or more of the above grounds for refusing bail exists rests on the prosecution. If the prosecution fails to do so, then the presumption in favor of bail prevails and the court will admit the accused on bail.
11. This Court having given due consideration to the realities of this case, I am persuaded that the best course to take is to uphold the accused persons' constitutional right and grant each of them bail, there being no compelling or exceptional reasons to the contrary.
12. Accordingly, I allow the application in the following terms;
 - a. Each accused person be released on a bond of Ksh.1,000,000/= plus one surety each, Ans An Additional Contact Person.
 - b. Alternatively, each accused person may be released upon payment of a cash bail of Ksh.500,000/= deposited in court, plus 2 contact persons
 - c. The sureties shall be approved by the Deputy Registrar of this court.
 - d. The Accused person shall not contact or intimidate, whether directly or by proxy, any of the witnesses in this case as per the witness statements and other documents that have been supplied by the State to the defense.
 - e. The accused persons shall attend all court sessions when and if so, required not leave the jurisdiction of this court without prior order of this court.
 - f. If any of these conditions are violated, the violating accused person is liable to have his/her bail cancelled and shall proceed with the case while in custody.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 12TH DAY OF FEBRUARY 2026.

Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI

JUDGE

In the presence of:-

The Applicant - Mr. Khamisi

Mr Sirima For The State -

Mr. Kuria Beboru Court Assistant



SIGNED BY/FOR:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

