



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION- MILIMANI COURT
CRIMINAL CASE NO. E071 OF 2024

REPUBLIC.....PROSECUTION
GEORGE MWENDA MUTEGI..... ACCUSED

RULING ON BAIL/BOND

INFORMATION

1. The Accused herein is charged with the offence of Murder contrary to Section 203 as read with **Section 204** of the Penal Code Cap 63 Laws of Kenya.
2. Particulars being that on 31st October 2024 at Kahawa West area in Kasarani Sub- County within Nairobi County the Accused murdered **Lilian Achieng Aluko.**

3. On 16th January 2024, Accused person's Advocate applied orally before Court for the accused to be released on Bail/Bond.

REPLYING AFFIDAVIT PROSECUTION

1. On 13th January 2025 No.6004 CPL NJAGI NJUE, of DCI Kasarani- Nairobi filed Replying Affidavit and stated as follows:-

2. THAT although Article 49(1) (h) of the Constitution grants the accused right to bail, the right is not absolute and should be exercised judiciously under Courts discretion.

3. THAT the accused, GEORGE MWENDA MUTEGI was charged with one count of murder contrary to Section 203 as read with Section 204 of the Penal Code.

4. THAT the incident occurred on the night of 31st October 2024 at Kahawa west in Kasarani Sub-County within Nairobi County murdered Lilian Achieng Aluko.

5. THAT the deceased and the accused person were known to be in a relationship since 2020. And over the period of four years they used to stay together on and off since the deceased home was in Kahawa west where the parents resided.

6. THAT Prior to the incident, the accused and deceased were known by neighbors to engage in physical fighting. On 31 October, 2024 after the deceased had come with her mother from her rural home, she called the accused person and asked him to meet at Dijo's club at Kamae area where they met and drunk alcohol until 8:00pm after when they went to the deceased home by foot.

7. THAT when they got to the house, the accused decided to go out and buy more alcohol and later come back. They drunk as the radio woofer was on and loud. The accused at that time started questioning the deceased about some rumors he had heard about the deceased having affairs with other men within Kahawa west.

8. THAT the deceased denied the allegations and the accused hit her on the head while pulling her hair and she started screaming. The neighbors heard the scream and got out of the houses but they could not get inside since the door was locked and the music was too loud

9. THAT on 14th November 2024 in the morning at 10:00 am when the accused woke up, he tried to wake

up the deceased but she was not responding. At around 3:00pm she still was not responding and the accused decided to go to a nearby clinic and requested the clinical officer to come to his house and examine the deceased.

10. THAT when the Clinical Officer examined the deceased, he realized she was dead. He informed the area Chief and the accused mother via their mobile phone.

11. THAT the accused alleges that he got out the compound to go look for friends to help him take the deceased to the hospital but he did not return and disappeared to his hide out in Kaanwa Thakara Nithi County where he was traced and arrested

12. THAT by the virtue of his conduct of running and hide in another county the accused person has demonstrated that he is flight risk. Granting him bond/bail would diminish his likelihood of not attending Court but of being traced in the event of absconding.

13. THAT after Post Moterm it was opinioned that the deceased died due to blunt force trauma which is consisted with assault.

14. THAT the neighbors who heard the deceased screaming that fateful night are well known by the accused as they are tenants of this mother and he was the caretaker of the building.

15. THAT we are apprehensive that if the accused is granted bail/bond he would intimidate, instill fear and or coerce them not to give evidence in this matter.

16. THAT the accused person herein has been charged with the serious offence of murder and if found guilty the punishment meted out could be that of the death penalty and therefore there are more probabilities and incentives for the accused person to abscond if released on bail or bond pending the determination of the hearing.

17. THAT the Court should take judicial notice of the rise in Femicide cases in the country that even culminated in public outrage and debate and eventually a march/demonstration in 11 counties on 27th January 2024 to protest the slaying of women. There is a high likelihood that his release will not only jeopardize the community, but would disturb public order, peace and security in Kenya.

18. THAT the release of the accused person on bond pending the hearing and determination of the trial is not absolute and is at the discretion of this Honorable Court thus urge this Honorable Court in view of the above reasons to find that there are compelling reasons to deny him bond pending hearing and determination of this case.

REPLYING AFFIDAVIT OF GEORGE MWENDA MUTEGI

4. In response to paragraph 3 of Mr. Njue's affidavit, he confirmed that on 16th January, 2025 the Accused person took plea before the Hon. Justice Kanyi Kimondo PJ; where he entered a Plea of 'Not Guilty' to the Charge of Murder **C/S 203 as read with 204 of the Penal Code**, the particulars of which are as set out in the Information dated 21 November, 2024,
5. In response to paragraph 2 of Mr. Njue's affidavit, he reiterated that **Article 49 (1)(h) of the Constitution** accords him the right to be released

on reasonable bail/ bond terms pending hearing and conclusion of the present trial; unless the State evinces compelling reasons to the contrary. Further, **Article 48 of the Constitution** safeguards his right to access justice without any impediments

6. In reply to paragraphs 5,6,7,8,9,10 and 13 of Mr. Njue's affidavit, he reiterated that the contents remain mere allegations and inadmissible hearsay, in so far as they are gleaned from any intended witness testimony.
7. In response to paragraph 11 of Mr. Njue's affidavit, he confirmed that on 14th November, 2024, he went and called Mr. Douglas Nyasani, a clinical officer at Bima Medical Centre in Kahawa West who went to the house and examined Lillian (now deceased). Mr. Nyasani advised him to look for transport means and a friend to help him take her to Kiambu Hospital immediately.
8. He went and looked for 3 friends of his but when they returned to the house, they saw Lillian, they declined to assist. He went out again to look for a taxi. When he returned, he found that the house was crowded with a mob together with Police Officers.

9. At that moment, he was apprehensive that he would be attacked by the mob. He therefore boarded a Matatu and proceeded to Tharaka Nithi, at his parent's farm in Kaanwa, where he was later apprehended and arrested by the Police.
8. He denied the contents of paragraph 12 of Mr. Njue's Affidavit. Tharaka Nithi is his home County and their family's permanent residence and cannot be said to be a hide out. His parents and siblings stay in Tharaka Nithi and he went to Kaanwa, his parent's farm as a safety precaution against the mob that was gathered at the house in Kahawa West. He remained in Kaanwa from 1st to 8th November when he was arrested. He is not a flight risk. He is eager to clear his name of the charges levelled against him.
9. He engaged in gainful self-employment as a Tuktuk operator and he shall abide by any, and all, conditions that shall be set by this the Court in granting Bail/Bond.
10. In response to paragraphs 14 and 15 of Mr. Njue's affidavit, he shall not interfere with any witnesses in the matter or impede investigations; should any further investigations be necessary. He does not

intend to go back to the same house in Nairobi next to where the named witnesses reside. He will stay with his parents and family at their home in Tharaka Nithi. Besides, the said witnesses have already recorded statements and thus the claim that he will interfere with witnesses was baseless and misapprehended.

11. In response to paragraph 16 of Mr. Njue's affidavit, he reiterated that having entered a Plea of Not Guilty, he was presumed innocent until the contrary is proved, following a Trial. He was further advised by his advocates on record; whose advice he verily believes to be true, that Bail/Bond terms only serve the purpose of guaranteeing an Accused Person's attendance during trial; and cannot be used as a form of punishment or for other collateral purposes.

12. Upon his release, on reasonable bail/ bond terms, he will

avail himself to the Court, as and when required to do so, during the entirety of the Trial.

13. In response to paragraph 17 of Mr. Njue's affidavit, any

demonstrations that may have occurred in the country on 27th January, 2024 are not linked to current proceedings that relate to an incident that occurred in November, 2024. Further, there was no evidence presented before this Court to show that any such demonstrations, if at all, were a breach of public order, peace and security rather than an exercise of the right of the people of Kenya to assemble, demonstrate, picket and petition under **Article 37 of the Constitution**. The Respondent has not shown that he will personally jeopardize the community or breach public, peace and security if released on bail/bond.

14. He has remained behind bars and had no contact with the outside world for a period of more than 2 months since 8th November, 2024 when he was arrested. He has, up to the date of making the Application for bail/bond, cooperated fully in the investigations in this matter.
15. No compelling reasons has been advanced nor evidence presented by the Respondent to warrant the denial of his release on bail/bond.

16. He prayed that the Court releases him on reasonable bail/bond terms. He is committed to abide by such conditions as may be imposed by the Court for my release.

APPLICANT'S SUBMISSIONS IN SUPPORT OF THE APPLICATION TO BE RELEASED ON REASONABLE BAIL/BOND TERMS

17. The Applicant, GEORGE MWENDA MUTEGI, was arrested on 8th November 2024. He has remained in custody since then and was charged with the offence of murder contrary to section 203 as read with 204 of the penal code on 16th January, 2025. He entered a plea of not guilty and made an Application to be released on reasonable/lenient/favorable bail/bond terms under **Article 49(1)(h) of the Constitution of Kenya 2010**.

18. The Application was opposed by the prosecution through the affidavit of CPL Njagi Njue dated 13th January, 2025. In response, the Applicant filed a Replying affidavit dated 20th January 2025.

19. Having entered a plea of not guilty, the Applicant is, by dint of **Article 50(2)(a)** of the Constitution, presumed innocent until the contrary is proved, following trial. **Article 49(1)(b)** of the Constitution accords the Applicant the right to be released on reasonable bail/bond terms pending hearing and conclusion of the present trial; unless the state evinces compelling reasons to the contrary. There is no compelling reason why the Applicant should not be released on bail/bond.
20. **Article 48 of the Constitution** safeguards the Applicant's right to access justice without any impediments. His continued detention pending trial deprives him of his liberty and freedom of movement which amounts to being punished before registering of any findings of guilt by a Court of law.
21. In **Jackson Maina Wanguli vs Republic [2012] KEHC 3013 (KLR)** the Court observed that
- "if the presumption of innocence is to have any meaning at all then at this stage, an accused person should not be deprived of his liberty save in exceptional circumstances."***

Bail/bond terms only serve the purpose of guaranteeing an accused person's attendance during trial; and cannot be used as a form of punishment or for collateral purposes. We

urge the Court to consider the **Bail and Bond Policy Guidelines** that sets out the criteria the Court should bear in mind while considering the present Application

Quoting Chesoni J (as he then was) in **Ng'ang's Vs Republic 1985 KLR 451 L** outlined the principles set out under the bail and bond policy guidelines at paragraph 56 in the case of **Republic v Fredrick Ole Leliman & 4 others (2016) KEHC 992 (KLR)** as follows:-

"The Court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should grant bail to the accused person unless it is shown by the prosecution that there are substantial grounds for believing that

- i. The accused will fail to turn up at his trial or to surrender to custody;**
 - ii. The accused may commit further offences;**
- or**
- iii. He or she will obstruct the course of justice.**
 - iv. The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the Court must consider,**
 - v. The nature of the charge or offence and the seriousness of the punishment to be awarded if the Applicant is found guilty;**
 - vi. The strength of the prosecution case;**
 - vii. The character and antecedents of the accused;**
 - viii. The likelihood of the accused interfering with prosecution witnesses."**

22. As set out in the Replying Affidavit, the Applicant is not a flight risk and he has undertaken that upon release, he shall abide by any, and all conditions that shall be set by the Court in granting him bail/bond. He has, from the date of arrest until now, co-operated fully in the investigations of the matter.
23. Regarding alleged likelihood of the Applicant interfering with witnesses, this is a far cry from reality. The investigations are deemed complete when the decision to charge the accused was made. The witnesses already recorded their statements that has been filed with the Court. In those circumstances, there is no danger that the Applicant will interfere with investigations. If they do the prosecution will be at liberty to make Application for the cancellation of his bail and/or bond.
24. The Applicant acknowledges that the grant of bail is not automatic. It is always at the discretion of the Court. It is incumbent upon the Court to weigh the available evidence for and against the grant of bail. In the present circumstances the Applicant humbly prays that the Court exercise the discretion in his

favour by releasing him on reasonable bail/bond terms. He has committed to abide by such conditions as may be imposed by the Court for his release.

PROSECUTIONS SUBMISSIONS ON DENIAL OF BOND

1. The accused person is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars are that on the night of 31st October 2024, at Kahawa west in Kasarani Sub-County within Nairobi County murdered LILIAN ACHIENG ALUKO.
2. The accused person through his Counsel filed a Bond/Bail Application through an affidavit dated 20th January 2025. The State opposed the said Application vide an affidavit dated 13th January 2023 sworn by CPL Njagi Njue of DCI Kasarani,
3. They said that several compelling reasons have been advanced in the affidavit sworn by CPL Njagi Njue which justify the denial of bond of the accused person. They submitted that they have highlighted undeniable factors on their affidavit which they urge to be considered justifiable to deny the accused bond/bail.

GROUND OF OPPOSING BOND

- 1. The strength of the Prosecution's Case and the nature of the charge the accused is charged with.**

The accused person has been charged with serious offence of murder and which carries a heavy penal if convicted. There is therefore more probabilities of the accused absconding bond if released on bail/bond. In **Republic V Margaret Nyaguthi Kimeu (2013) eKLR**, the Court went ahead and denied the accused/Applicant bond pending the hearing and the determination of the case after stating:-

"I have considered the Application, the nature of the offence and the strength of the evidence on record and the severity of the sentence to be meted out if the Applicant is found guilty."

- 2. There's real apprehension with the accused persons interfering with prosecution witnesses.**

It is our submission that several prosecution witnesses are very well known to the accused. The said witnesses include the accused person's mother who is the landlady to the houses where the accused stayed with the deceased and neighbors who were tenants at his mother's premises.

The accused person has been provided with witness statements, and therefore, knows the identities of the said prosecution witnesses and is privy to the nature of the evidence that these witnesses will adduce at trial, this greatly increases the likelihood of the accused person contacting and inflicting genuine fear and anxiety in the potential prosecution witnesses.

3. In the case of **Republic v William Masika Tasika [2020] eKLR** the Court in denying the accused person bond noted as follows;

"The following issues have been raised by the prosecution; - the accused and the deceased were wife and daughter respectively, the intended prosecution witnesses were their neighbors and the

accused coworkers. Whereas it had been indicated that the accused would if released on bond go back to his rural home, in view of the fact that his home is next to the home of the deceased and given the fact that there are allegations of an attempt to threaten the family of the victims, it is clear to my mind that should the accused be released on bond at this stage, there is real likelihood of his presence interfering with the course of justice. Interference with witnesses is one of the compelling reasons upon which the accused may be denied his right to bail."

4. Further, In the case of **Republic Vs. Fredrick Ole Leliman & 4 Others [2019] ekir, Lesiit J** denied accused persons' bond. At paragraph 72, she stated,

"In regard to public interest and the compromise of the criminal justice system through various forms of interferences with the case, all that the

law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in Court or during the trial; and can be committed by any person including the accused, witnesses or other persons."

5. Hearing of this matter is yet to start and it would therefore be in the best interest of justice and not prejudicial to enable the witnesses to testify before any decision on bond/bail is delivered.
6. They pray that the Court do take judicial notice as per the provisions of **Section 60 of the evidence Act** of the rise in femicide cases in the country that triggered demonstration on 27th January 2024.

We submit that admitting the accused person herein on bond might jeopardize public order and peace in the community.

ANALYSIS & DETERMINATION

The Court considered pleadings and submissions filed by Parties/Counsel on record for all parties.

The issue for the Court to determine is grant/no grant of bail and bond to Accused person pending trial.

This Court recognizes the right to bail and bond enshrined in the Constitution but the grant of bail and bond is considered alongside circumstances of each case.

The Accused person through Counsel made application for release on bail and bond and relied on **Art 49 (1) & (2) Constitution** on bail bond being granted unless Prosecution proves compelling reasons.

Section 123 124 & 125 CPC and the **Bail & Bond Guidelines; 2016** on consideration to grant bail and bond.

The Affidavit to oppose grant of bail and bond by CPL Njagi Njue dated 13th January, 2025. In response, the Applicant filed a Replying Affidavit dated 20th January 2025 whose content is summarized above.

The law prescribes that the Accused person is presumed innocent until proved guilty at trial and grant of bail and bond is to ensure the Accused person attends Court. Grant of bail and bond is withheld where the Prosecution raises compelling reasons.

The Accused deposed that he has fixed abode, family home at Tharaka Nithi and he is not a flight risk on the date of the incident when the crowd gathered, he feared mob justice and fled to his rural home. He undertook not to interfere with witnesses.

The Investigating Officer in the Affidavit paragraph 18 deposed that the release of bail and bond is not absolute and in view of compelling reasons bail and bond should be withheld.

The PRE-BAIL Report filed on 18/2/2025 detailed close family ties and the Accused person's conduct in the Community Local Administration he is well behaved with no antecedents single with no family of his own. The family is ready and willing to support him on release of bail and bond.

The victim's family is distraught with grief and sorrow, lost their kin at young age with promising life ahead. Both Accused and victim families knew each other and lived in

same area; fear is release of bail and bond will instill fear for witnesses to testify which amounts to possible witness interference.

The Probation Officer recommended that the Court may release the Accused person on bail and bond but on stringent terms to address the high-lighted risk factors.

The Prosecution indicated that compelling reasons consist of nature and seriousness of the offence and evidence but this Court finds that by itself is not sufficient as the Trial shall determine culpability or otherwise of the Accused person in commission of the offence.

The interference of witnesses based on the fact of various witnesses are known to the Accused person and include the Accused person's mother who is the landlady of the house(s) among them where accused person resided with deceased and the neighbors who are his mother's tenants. The Prosecution demonstrated close relations and proximity to confirm possibility of witness interference. To err on the side of caution, I find the reason of fear of witnesses to testify and close interaction justifies bail band to be withheld until the crucial vulnerable witnesses testify.

DISPOSITION

- 1. Bail/bond denied at this stage until crucial witnesses testify.**
- 2. The prosecution to expedite hearing especially of crucial witnesses**
- 3. Thereafter, bail/bond application be renewed or if new developments arise.**
- 4. Further mention on 23/2/2026 for hearing date.**

**RULING DELIVERED DATED & SIGNED IN OPEN
COURT CRIMINAL DIVISION -MILIMANI ON 12/2/2026
VIRTUALLY/PHYSICALLY**

**M.W. MUIGAI
JUDGE**