



**Republic v Nyambok alias Otis Ras & another (Criminal Case  
E001 of 2026) [2026] KEHC 1384 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1384 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE E001 OF 2026  
OA SEWE, J  
FEBRUARY 12, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALFRED OTIENO NYAMBOK ALIAS OTIS RAS ..... 1<sup>ST</sup> ACCUSED**

**EDWIN OTIENO OLAL ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two accused persons, Alfred Otieno Nyambo alias Otis Ras (the 1<sup>st</sup> accused) and Edwin Otieno Olal (the 2<sup>nd</sup> accused), stand charged with two counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Chapter 63 of the Laws of Kenya. They denied the allegations against them; whereupon their Counsel, Mr. Ouma and Mr. Oteng, made oral applications on their behalf, seeking that they be admitted to bail pending their trial.
2. The bail application was opposed by Ms. Mokuu, the Prosecution Counsel, and Mr. Nyauke, counsel for the deceased's family. While conceding that the accused persons have a right to bail pending hearing and determination of the case against them pursuant to Article 49 of *the Constitution*, the Prosecution Counsel submitted that there are compelling reasons to warrant the curtailment of that right. She relied on the affidavit sworn by the investigating officer SP Daniel Muhuhi, the two Pre Bail Reports filed herein by Probation and Aftercare Services as well as the Judiciary Bond and Bail Policy Guidelines, 2015, in urging the Court to find that sufficient cause has been shown to warrant the continued incarceration of the accused persons.
3. The Prosecution contended that after the murder of the two deceased persons, the accused persons and their associates fled the scene; and that since they reside within the same locality as the prosecution witnesses, their release on bail poses a real risk of interference with witnesses.



4. SP Muhuhi further averred that on the 12<sup>th</sup> November 2025, while acting on intelligence to arrest the suspects adversely mentioned in the murder the subject of this case, police officers and DCI personnel traced the suspects to the homestead of Hon. Boyd Were at Karabok. The accused persons were found in the company of other suspects and upon arrest, the accused persons resisted and instead raised alarm. According to SP Muhuhi, the accused persons quickly mobilized a violent mob of approximately 100 armed goods who forcibly rescued the suspects from lawful police custody.
5. He further stated that in the course of the confrontation, police officers were locked inside the compound of Hon. Were and were pelted with stones, and were constrained to fire warning gunshots in the air for self-protection. SP Muhuhi averred that as a direct result of the violent resistance and incitement to violence by the accused and their accomplices, he sustained a cut injury on the left side of his face; while a colleague suffered a deep cut on the left wrist. He contended that the violent conduct exhibited by the accused persons and their associates, including resisting arrest, inciting violence and facilitating rescue of murder suspects demonstrates blatant disregard for lawful authority, court processes and public order.
6. Accordingly, it was the assertion of the Prosecution that the foregoing conduct presents a clear and imminent danger that if released on bond, the accused persons are likely to interfere with witnesses, intimidate members of the public, obstruct police investigations and instigate further violence. SP Muhuhi deposed that their investigations revealed that the accused persons are associated with organized groups of goons who unleashed terror during political activities within Rachuonyo South Sub-County, as per OB 13/25/09/2025. As a result, several witness have expressed fear for their safety should the accused persons be released back into the community.
7. Another factor adverted to in the affidavit of SP Muhuhi was that the accused persons have previous criminal records. The particulars thereof were set out in paragraphs 18 of the said affidavit. On the basis thereof, the Prosecution contended that accused persons are habitual offenders who are prone to violence; and that their released at this stage is likely to prejudice the administration of justice. Accordingly, the Prosecution Counsel prayed that the bail application be dismissed.
8. On behalf of the family of the deceased, Mr. Nyauke supported the objection raised by the Prosecution. Although he asked for time to put in an affidavit on behalf of the families of the deceased, he ultimately did not do so and explained that he did not get hold of the documents he intended to rely on.
9. With leave, the accused persons filed affidavits to refute some of the factual aspects raised in the affidavit of SP. Muhuhi. In his Replying Affidavit, the 1<sup>st</sup> accused averred that he is a resident of Oyugis Township within Homa Bay County, having been born and raised there and having continuously resided therein since infancy. He averred that all his familial, social, and economic ties are firmly and permanently established within the said locality; and therefore it is practically and reasonably impossible for him to relocate or abscond from the jurisdiction of this Court. He added that he has an identifiable and permanent place of abode within Oyugis, which residence is well known to the local administration, his employer, neighbours, and members of the community.
10. The 1<sup>st</sup> accused further deposed that he is an employee of the County Government of Homa Bay, working on a permanent basis as a Security Constable. He annexed a copy of his letter of employment and had it marked as Annexure AON-1. He explained that his employment is structured, and regulated under the public service framework, requiring strict adherence to official attendance, discipline, and statutory obligations, on a daily basis. Hence, his averment was that the nature of his duties, reporting structure, and continuous supervision by his employer firmly anchor him within the Court's jurisdiction; and therefore he is not a flight risk.



11. The 1<sup>st</sup> accused further deposed that his continued detention places his employment in imminent jeopardy owing to the mandatory administrative and statutory attendance requirements applicable to public officers, and prolonged absence may lead to suspension, disciplinary action, or termination of service. He added that loss of employment would occasion grave and irreparable financial and social hardship not only to him but also to his young children, siblings, and other dependants who wholly rely on his income for their sustenance, education, and basic needs.
12. In response to the averments set out in the affidavit of SP Muhuhi, the 1<sup>st</sup> accused averred that the same are largely speculative, exaggerated, and unsupported by any credible or verifiable evidence. He therefore denied that he is likely to interfere with witnesses, obstruct investigations, or otherwise undermine the administration of justice. He also contended that the said officer is conflicted, biased and incapable of providing independent, credible or reliable information to the Court. In this regard, the 1<sup>st</sup> accused made reference to Paragraphs 10 to 15 of the Prosecution's affidavit. He denied that he was at the homestead of Hon. Boyd Were on 6<sup>th</sup> November 2025, at the time when Mr. Daniel Muhuhi was allegedly attacked.
13. The 1<sup>st</sup> accused also deposed that he resides in the same locality as the prosecution witnesses and that no complaint has ever been raised or recorded alleging that he threatened, intimidated, contacted, or in any way interfered with any witness. He posited that mere proximity or residence within the same locality as witnesses does not constitute a compelling reason to deny him bail. He urged the Court to consider that he has been admitted to bond previously in unrelated matters and that he has faithfully complied with all the bond terms and conditions without breach, absconding, or misconduct of any nature. In his view, his past compliance while at liberty is clear proof that he can be trusted to obey any bond or bail conditions that this Court may impose.
14. The 1<sup>st</sup> accused denied that he is a member of an organized group of goons and averred that allegations to that effect are unproven and baseless, as no charges have been filed against him in relation thereto, notwithstanding that the letter making the allegation is dated 8<sup>th</sup> October 2025. He undertook to strictly comply with any terms or conditions that may be imposed by this Honourable Court, including reporting requirements, provision of sureties, or any other reasonable conditions deemed fit.
15. The 2<sup>nd</sup> accused made more or less similar averments as the 1<sup>st</sup> accused. He averred that he is a resident of Oyugis; having been born and raised there. He also deposed that his immediate and extended family members, relatives and dependants all reside within Oyugis and its environs; and therefore he has a known place of abode from where he is easily traceable. He therefore denied that he is a flight risk.
16. The 2<sup>nd</sup> accused averred that his continued detention has gravely prejudiced his minor children who have had to rely on relatives in his absence. He accordingly contended that it is in the broader interest of justice, humanity and family welfare that he be granted an opportunity to continue providing for his dependants while attending court as and when required.
17. He denied the allegations made by Mr. Muhuhi and contended that he is conflicted and therefore unreliable and incapable of providing independent evidence before the Court pertaining to the bail application. He similarly averred that he has been released on bond before and has obeyed the bond terms as imposed. He urged that his consistency be taken as proof that he is trustworthy. He added that he is ready and willing to abide by any conditions that the Court may impose as conditions for his release on bond.



18. There is no gainsaying that bail is a constitutional right. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“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.”

19. Moreover, by dint of Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. Hence, in the Bail and Bond Policy Guidelines, it is recommended that:

The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.

20. The factors to take into account in a bail application are various. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, for instance stipulates that:

(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.

21. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

22. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:

- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- (b) The strength of the prosecution case.



- (c) The character and antecedents of the accused person.
  - (d) The failure of the accused person to observe bail or bond terms.
  - (e) The likelihood of interfering with witnesses.
  - (f) The need to protect the victim or victims of the crime.
  - (g) The relationship between the accused person and the potential witnesses.
  - (h) The best interest of child offenders.
  - (i) The accused person is a flight risk.
  - (j) Whether the accused person is gainfully employed.
  - (k) Public order, peace and security.
  - (l) Protection of the accused persons.
23. There is no doubt as to the seriousness of the offence the accused persons are charged with and the punishment to be meted if the accused person is found guilty. The offence of murder is one of the most serious offences in the land; and that it entails the death penalty as the maximum punishment provided for in law. Thus, in *Watoro v Republic* [1991] KLR 220, it was held thus:
- The seriousness of the offence in terms of the sentence likely to follow a conviction has been held repeatedly to be a consideration in exercising discretion. If the presumption of innocence were to be applied in full, there would never be a remand in custody ... the seriousness of the offence has a clear bearing which the court ought to bear in mind on the factors influencing the mind of an accused facing a charge in respect of the offence as to whether it would be a good thing to skip or not, and such a possibility is not out of question: it has happened before, and in similar cases...the presumption of innocence cannot rule out consideration of the seriousness of the offence and the sentence which would follow on conviction...”
24. Nevertheless, in the current constitutional order, murder is an offence like any other for the purposes of bail pending trial; and therefore, a bail application in a murder case, as in any other case, has to be looked at from the prism of Article 49(1)(h) of *the Constitution*; and the key question that takes centre stage is whether the accused person will turn up for his trial if released on bond. I therefore find apt the expressions of Hon. Ibrahim, J. (as he then was) in *Republic vs. John Kahindi Karisa & 2 Others* [2010] eKLR that:
- “This Constitutional provision came into force after the promulgation of the New Constitution. As a result of this, the provisions of Section 123 of the Criminal Procedure Code which made the offences of murder, treason and robbery with violence non-bailable offences became obsolete and in effect repealed and inapplicable. In all these cases, the mandatory sentences provided by law is Death, and were referred to as Capital Offences. The said sentences are still applicable. It means now that in case a suspect is charged with any offence under the Penal Code including those that attract the death sentence e.g. murder, the same is bailable. A murder suspect has a Constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”
25. It is a positive factor that the accused persons have demonstrated on oath that they are persons of fixed abode. The 1<sup>st</sup> accused has in addition shown that he is an employee of the County Government of



- Homa Bay. It is also a positive factor that they have observed previous bond terms, there being no proof by the Prosecution of breach in that regard. I therefore find any allegations that the accused persons may jump bail to be baseless in the circumstances.
26. The foregoing notwithstanding, from the averments set out in the affidavit of SP Muhuhi, the responses made by the accused persons in their Replying Affidavits as well as the submissions made by learned counsel for the Prosecution, the Defence and the deceased's families, it is manifest that the grounds relied on by the Prosecution in opposing the release of the accused on bond are the character and antecedents of the accused person, the likelihood of the accused persons interfering with the prosecution witnesses, the need to protect the families of the victims and the need to preserve public order security and peace in the locality concerned.
27. In the premises, the key issues which now arise for consideration in connection with the bail application are:
- (a) The likelihood of the accused persons interfering with witnesses and the need to protect the victim or victims of the crime
  - (b) Whether or not the release of the accused persons on bond would work against the public order, peace and security;
28. The averments of SP Muhuhi in connection with the circumstances surrounding the arrest of the accused persons are pertinent. He averred that on the 12<sup>th</sup> November 2025, they traced the accused persons to the homestead of Hon. Boyd Were at Karabok where they were found in the company of other suspects. The Prosecution presented evidence to the effect that upon arrest, the accused persons resisted, raised alarm and thereby quickly mobilizing a violent mob of approximately 100 armed goods who forcibly rescued the suspects from lawful police custody.
29. He further stated that in the course of the confrontation, police officers were locked inside the compound of Hon. Were and were pelted with stones. He added that the police were constrained to fire warning gunshots in the air for self-protection. SP Muhuhi also averred that, as a direct result of the violent resistance and incitement to violence by the accused and their accomplices, he sustained a cut injury on the left side of his face; while a colleague suffered a deep cut on the left wrist. He contended that the violent conduct exhibited by the accused persons and their associates, including resisting arrest, inciting violence and facilitating rescue of murder suspects demonstrates blatant disregard for lawful authority, court processes and public order.
30. Apart from general denial by the accused persons there is a real danger that if released on bond, the accused persons are likely to interfere with witnesses, intimidate members of the public, obstruct police investigations and instigate further violence. SP Muhuhi also deposed that the accused persons are associated with organized groups of goons who unleashed terror during political activities within Rachuonyo South Sub-County, as per OB 13/25/09/2025. In the circumstances, the Prosecution is justifiably apprehensive about the safety of their witnesses.
31. The Prosecution also brought to the attention of the Court the antecedents of the accused persons. At paragraph 18 of their affidavit, it was averred that the 1<sup>st</sup> accused person has had the following previous cases against him at Oyugis Law Courts
- (a) Criminal Case No. E082/2020-possession of illicit brew;
  - (b) Criminal Case No. MCCR/E467/2025-robbery with violence
32. As for the 2<sup>nd</sup> accused, it was alleged that he had the following previous cases at Oyugis Law Courts:



- (a) Criminal Case No. CR. 138/2022-stealing;
  - (b) Criminal Case No. MCCR/E290/2024-creating disturbance;
  - (c) Criminal Case No. MCCR/171/2025-assault;
  - (d) Criminal Case No. MCCR/E195/2025-malicious damage
33. Therefore, the assertion by the Prosecution that the accused persons are prone to violence is not far-fetched. It is however notable that in the case of the 2<sup>nd</sup> accused, the Pre Bail Report is favourable in that the accused was found suitable for release on bond terms so long as the concerns of the witnesses and victims are taken into consideration.
34. In the case of the 1<sup>st</sup> accused, the Pre Bail Report, in the main, lends credence to the Prosecution's apprehensions. A suggestion was made in his report that he ought to remain in custody until all the prosecution witnesses will have testified. Consequently, the question to pose is whether there are no less restrictive means to achieve the same objective of ensuring peace and security other than denial of bond. It is not unusual for the courts, in such circumstances, to impose such conditions as are necessary with a view of striking the proper balance between the accused persons' constitutional right to bail and the interests of justice; including the requirement that the accused persons keep off certain localities; the paramount consideration being that they be on hand for their trial as and when required.
35. In this regard, I agree entirely with the position taken by Odunga, J. in *Republic v Robert Zippor Nzilu* [2018] eKLR that:

"...in cases where limitations to the right to bail contemplated above exist, the Court must, as provided in Article 24(1)(e) of *the Constitution*, be satisfied that there are no less restrictive means to achieve the purpose other than the denial of bail. In other words the Court is required to explore the possibility of achieving the primary objective of granting bail, which is the attendance of the accused at the trial, by imposing such conditions that would ameliorate the possibility of the exceptions being a hindrance to the fair trial. The ordinary meaning of the word "compelling" according to Thesaurus English Dictionary is forceful, convincing, persuasive, undeniable and gripping. In my view bare averments of threats without elaborating the same or convincing evidence whether direct or indirect cannot amount to forceful, convincing, persuasive, undeniable and gripping evidence in order to amount to compelling reasons."

- (36) In the premises, it is my finding that no compelling reason has been given to warrant the incarceration of the 1<sup>st</sup> accused for the entire duration of his trial. Accordingly the accused persons' bail application is hereby allowed on the following terms:
- (a) Each accused may be released on bond of Kshs. 3 million with two sureties standing for them in like sum.
  - (b) The accused persons are hereby prohibited from contacting any of the prosecution witnesses or relatives of the deceased persons named in the Information Sheet herein.
  - (c) The accused persons to keep peace and refrain from any acts of violence pending the hearing and determination of this case.



- (d) The accused persons will henceforth report monthly to Oyugis Police Station on the last Friday of every month.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT HOMA BAY THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**OLGA SEWE**

**JUDGE**

