



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HCCR. E001 OF 2025

REPUBLIC

PROSECUTION

VERSUS

PATRICK MUTHIANI MBAI

alias KASA KASA.....ACCUSED

RULING ON BAIL/BOND

INTRODUCTION

The Accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that on 8/12/2024 at Chokaa area in Ruai Sub county within the Republic of Kenya he murdered George Kebaso Obaigwa (deceased)

The Mental assessment report dated 19/5/2025 declared the Accused person FIT TO PLEAD

On 9th June 2025 the information and charge and all ingredients were read and explained to the Accused person who pleaded NOT GUILTY to the charge.

The accused person through his Counsel filed written submissions dated 17th November 2025

The Defense made application for release from custody of the Accused person on bail bond terms.

SUBMISSIONS BY PROSECUTION

1. The State relied on the Pre-Bail Report dated 16th July, 2025 by Probation Officer, Esther Mwalili. The Prosecution reiterate several compelling reasons have been advanced which justify the denial of bond of the accused person. The Prosecution submitted that they have highlighted undeniable factors on their affidavit which they urge the court to consider justifiable to deny the accused bail/bond.

MAIN GROUNDS IN OPPOSING BAIL/BOND IS THAT

1. There is a real apprehension with the accused person interfering with prosecution witnesses. The proximity between the accused and the

victim's family creates an unjustifiable situation for the administration of justice.

2. The Probation Report made several damning findings, the deceased's wife expressed fear and anxiety saying the accused could pose a threat and danger to her and other witnesses considering they come from the same locality. The accused lives in the neighboring area with the deceased's family members and witnesses thus he could pose a threat and interfere with witnesses.
3. The Prosecution stated that this is not a mere speculative fear but a reasonable well-founded apprehension. The witnesses and the accused are known to each other and reside in closely connected communities. Their paths are likely to cross creating opportunities for direct or indirect intimidation.
4. 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."

5. The circumstances in the present case are strikingly similar, the deceased's wife is vulnerable, eight months pregnant, sickly and grieving. Subjecting her to the anxiety of encountering the accused, who is charged with murdering her husband, would be unjust and would undermine her confidence in the judicial system.

2. THE SERIOUSNESS OF THE OFFENCE

The accused person has been charged with the serious offence of murder which carries a heavy penalty if

convicted. There is, therefore more probabilities of the accused absconding if released on bail/bond. The Bail Report concluded:

"Putting these into consideration, the granting of bail/bond could be deferred for later dates,"

and explicitly recommended that the accused person's release on bail/bond may not be tenable at present.

In **Republic vs 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."

For the above reasons they urged the court to deny accused person bond pending the hearing and determination of this case.

PRE- BAIL REPORT

On 16th July, 2025 Esther Mwalili a Probation Officer filed Pre - Bail Report and stated as follows:

SERIOUSNESS OF THE OFFENCE

The accused acknowledges the seriousness of the charges against him. He prays the court for favorable Bail/Bond terms and undertakes to abide by the terms and conditions set by the court should he be admitted to Ball/Bond

VICTIM'S CONCERNS

The victim was a 46-year old man. He was married and blessed with two children of ages nine and three and at the time of his demise the wife was two months pregnant. The first born child is in grade four while the second born is yet to join school.

The wife reported that the death of her husband was a big blow to their young vulnerable family considering she was sickly at the time of the incident causing her hospitalization out of the shock. She added that the husband was the bread winner who relied on casual jobs mainly at construction sites for livelihood as she was unable to work due to her delicate pregnancy. She depends on friends and support of family members for day to day upkeep. She felt it was too soon for the accused to be considered for release on bond terms. She expressed fear and anxiety saying the accused could pose a threat and danger to her and other

witnesses considering they come from the same locality

Other family members reported that the accused was used by some victims' relatives to silence him over a land issue that was to be decided before court under **ELCC/6/2021** on the 11/12/24 in their rural home. They added that the plan to have him released on bond was a strategy for him to escape, thus the family is strongly against the accused being granted bail/bond.

COMMUNITY REPORT

The local administrators at the accused place of residence reported that the accused has no history of criminality known to them. They termed the incident as an unfortunate one considering that the victim and the accused resided in the same locality and could occasionally interact due to the nature of their work. They did not oppose his release on bail/bond but called for stringent measures in determination of the bond. The local administrators from his home of origin acknowledged that the accused comes from a humble background. They supported his release on bond saying he is not a security threat but they could not guarantee his adherence to court since he lives in Nairobi and occasionally visits his village home.

CONCLUSION

The accused person is 44-year-old and hails from Machakos county but resides at Chokaa area in Nairobi County. He is married with three children who came into the union with their mother.

He understands bond terms and prays for favourable bail/ bond terms. His siblings are supportive and ready to respond to his bail/bond request if considered by the court. The victim's family, who are yet to come to terms with the death of their loved one, strongly opposed the accused's admission to ball/bond terms. They pointed out that; the victim's wife was heavily pregnant and not in a position to attend court sessions as a witness yet, he could be a threat to the immediate victim's family members since they come from the same area, he could interference with witnesses and that he was used to commit the act thus would escape

The community and local administrator did not object to his release on bail/bond saying he had no history of criminality but suggested stringent measures in case the court considers him for bail/bond terms. In view of the social findings, the accused has no prior history of criminality and he has close family and community ties. Regardless, the matter before court is still fresh, the victim left two young children, a wife who is still grieving, she is eight months pregnant, sickly and not

in a position to actively engage in court process yet, the accused lives in the neighboring area with the victim's family members and witness thus he could pose as a threat and interfere with witness and he rarely visits his home of origin. Putting these into consideration, the granting of bail/bond could be deferred for later date.

RECOMMENDATION

Based on the social findings, the accused person's release on bail/bond may not be tenable at present. However, this is subject to the Court' s discretion.

The Affidavit to oppose Bail and Bond though with the same High Court Criminal Case Number, the details are of one Henry Kyalo Wambua alias Junior and not Patrick Muthiani Mbai.

At the time of writing Ruling on Bail Bond the Applicant and/or Counsel did not file any submissions.

ANALYSIS & DETERMINATION

LAW

Bail is a constitutional right enshrined in **Article 49(1)(h) of the Constitution**. The test the Court is required to use to deny bail in appropriate cases is similarly stated in Article 49(1)(h) of the Constitution. It is only upon the Prosecution (ODPP) showing of compelling

reasons that the Court will deny bail. **Section 123 & 123A of the CPC** and **Bail & Bond Policy Guidelines of 2015** provide guidance on consideration of bail & bond Application.

Article 49(1)(h) of the Constitution grants bail for all offences, the gravity of the offences notwithstanding. The presumption of innocence is enshrined in **Article 50(2) of the Constitution**. **Section 123 of the Criminal Procedure Code** allows the accused person to request for bail, and the court to grant it.

The Bail & Bond Policy Guidelines of 2015 stipulate the factors that are considered in deciding to grant or not grant bail or bond to the Accused person. Current practice on application of bail or bond is informed by such factors as:

The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty; The strength of the prosecution case; Character and antecedents of the accused person; the failure of the accused person to observe bail or bond terms; likelihood of interfering with witnesses; need to protect the victim of crime
Likelihood of interfering with witnesses.

Where there is a likelihood that the accused will interfere with prosecution witnesses if released on bail or bond, he or she may be denied bail or bond. However, bail or bond will only be denied if

(i) there is strong evidence of the likelihood of interfering with prosecution witnesses, which is not rebutted, and

(ii) the court cannot impose conditions to the bail or bond to prevent such interference.

The need to protect the victim or victims of the crime from the accused person. The relationship between the accused person and potential witnesses, age of accused if the Accused is a child/young offender; whether Accused person is a flight risk; whether accused person is gainfully employed; maintenance of public order, peace or security and protection of the Accused person.

In Rep vs. Dwight Sagaray & others High Court Criminal Case No. 61 of 2012, Milimani. Hon.R. Korir,L J.

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of

a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others..., at least some facts must be placed before court otherwise it is asking the court to speculate.”

In the case of Ahmad Abolafathi Mohammad [2013]eKLR, Hon L.Achode L J (as she then was) considered the issue of accused persons being a flight risk and having been dishonest about their identities and observed as follows:

“The probability that the respondents may not surrender themselves for trial: In Daniel Dela Amega vs Republic [2006] eKLR, to which I was referred by learned counsel, Mr. Wandugi, Makhandia J, (as he then was) held that if there is merited fear, that the respondents may abscond if granted bail, then the court would ordinarily refuse to admit such an accused person to bail.”

Republic versus Danson Mgunya & Another

High Court at Mombasa, Criminal Case No. 26 of 2008

Constitution ought to be interpreted in a manner that enhances the rights and freedoms of individuals Compelling reasons must be stated, described and explained. If based on belief, the justification or basis for the belief must be demonstrated or shown.

Primary consideration is whether the accused person shall attend court and be available for trial (the omnibus criterion). Other factors to be considered within the parameters of this principle

The ODPP presented reasons to deny bail and bond to the Applicant/Accused person mainly that the Accused will interfere with witnesses. From the statements attached, the incident took place at the Bar with eye witness (es) not related to the victim family nor in relation to Land matter ELC6 of 2021 as alleged in the Pre-Bail Report. The Affidavit to oppose Bail or Bond with regard to this matter is not filed. From the statements, the Accused was arrested at the Bar. He did not flee from the scene.

DISPOSITION

This Court finds in the absence of cogent tangible evidence of possible interference with witnesses and/or the Applicant /Accused person resides in the same locality with the victim family as deposed, the Court is inclined to grant bail bond on the following terms;

- 1.The Accused person is released on bond of Ksh 500,000/- with 1 surety of like amount or**

- 2. The Accused person may be released on Cash Bail of Ksh 300,000/-**
- 3. The Accused shall report to In charge DCI Ruai every alternative Monday; every Monday after 2 weeks until further orders of the Court.**
- 4. The Applicant/Accused person shall comply with conditions of Bail /Bond;**
 - Not leave the jurisdiction of the Court**
 - Not to interfere with witnesses or victim's family**
 - Not to tamper with evidence**
 - Not to commit any offence whilst out on bond**
 - Attend Court on ALL required dates.**
- 5. Further mention to take hearing dates on 23/2/2026**

**RULING DELIVERED DATED & SIGNED IN OPEN COURT
CRIMINAL DIVISION OF HIGH COURT NAIROBI ON 10/2/2026.**

M.W. MUIGAI

JUDGE