



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**HCCR. E073 OF 2024**

**REPUBLIC**

.....**PROSECTUION**

**VERSUS**

**SAMWEL NYANGINA.....ACCUSED**

**RULING ON BAIL/BOND**

**INFORMATION**

1. The Accused Person **Samwel Nyangina**, 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**. Particulars being that on 4<sup>th</sup> day of July, 2024 at Lower Chokaa Area, Ruai Sub-County, within Nairobi County murdered Ian Odhiambo Omedo.
2. The mental Assessment was filed and indicated the accused person was FIT TO PLEAD. On 30<sup>th</sup> July

2025 the information and charge and all ingredients of the offence were read and explained to the Accused person who pleaded not guilty.

3. On 10<sup>th</sup> November 2025 the Accused person's advocate applied for bail and bond for the accused to be released on Bail/Bond.

## **B. GROUNDS FOR CONSIDERATION**

1. The accused is a first-time offender, a Kenyan citizen, married, and the sole breadwinner to his family.
2. The accused has no passport and no financial means to leave jurisdiction and thus he has no capacity to leave the jurisdiction of this Court.
3. His wife who is a housewife recently delivered their first child while the accused remained in custody. Detaining him further imposes undue hardship on innocent dependents. In determining whether to grant or deny bail the court's primary consideration is the existence or absence of compelling reasons that inform the exercise of its judicial discretion.
4. In the Court of Appeal case of **REPUBLIC VS NUSEIBA MOHAMMED HAJI Criminal Appeal No. 103 Of 2016** the court said

***"We stress the key words "unless there are compelling reasons" and adopt the definition of what amounts to compelling reasons in the High court decision of R .V. Joktan Mayende & 3 Others, Criminal Case 55 of 2009 as follows: "...And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution."***

## **GROUND OF OPPOSITION BY PROSECUTION THROUGH PC DAVID LOPEYOK**

1. The accused has no fixed abode.
2. He is a flight risk (having allegedly moved from Chokaa to Mwiki).
3. He may interfere with witnesses (based on alleged threatening calls).

## **RESPONSE TO THE ALLEGED COMPELLING REASONS**

### **(i) No Fixed Abode**

The prosecution's claim is not substantiated. The accused has a permanent residence in Ntimaru,

Migori County where he was born, raised, and maintains family ties.

5. In the case of **REPUBLIC VS LANGAT (CRIMINAL CASE E005 OF 2023) [2023] KEHC**

***“The court held to deny bond on account of lack of a fixed home would be discriminatory. In paragraph 12 of the ruling the learned judge observed that “In this case it has been brought to the attention of the court that the accused had no fixed abode as a result of eviction from the Mau Forest where his family had earlier settled. It has not been shown to me that he will fail to attend court from wherever he will be living at any particular time. To deny him bond on account of not having a fixed home at now would be discriminatory.”***

**(ii) Alleged Flight Risk**

The accused temporarily relocated from Chokaa to Mwiki following the incident. However, this was for his personal safety from a violent mob not to evade justice. He later cooperated fully with the

police and has no history of attempting to abscond thereafter.

6. In the case of **REPUBLIC vs DWIGHT SAGARAY & 4 OTHERS [2013] KEHC 3824 (KLR)** the court considered

***“The considered view that the panacea for possible flight is not to automatically deny bail but to impose stringent conditions that would attract attendance at trial”***

The accused has no passport and no financial means to leave jurisdiction and thus has no capacity to leave the jurisdiction of this Court.

(iii) **Alleged Witness Interference**

The alleged threatening calls are unsupported by affidavit evidence identifying the witnesses, phone numbers, or dates of the alleged communication. Courts have cautioned that such assertions must always be substantiated.

6. In the case of **REPUBLIC Vs DWIGHT SAGARAY & 4 OTHERS [2013] KEHC 3824** the court agreed with the holding in **Panju Vs Republic [1973] E.A 284**, where the court in dismissing the prosecutor's fear of interference with witnesses stated that before any one can say

there would be interference with vital witnesses, at least some facts should be led to the court, otherwise it is asking courts to speculate."

The investigating officer is merely making allegations and no evidence was tendered for the court's consideration.

### **PROSECUTION'S AFFIDAVIT IN OPPOSITION OF BOND**

7. On 28<sup>th</sup> November, 2024 No. **243714 PC David Lopeyok** of the Prosecution filed an Affidavit and stated as follows:

1. THAT on 5<sup>th</sup> July 2024 at the Ruai Police Station, it was reported that on 4<sup>th</sup> July 2024 the deceased herein **Ian Odhiambo Omedo** had been stabbed at Lower Chokaa area, Ruai Sub County in Nairobi County and rushed to Mama Lucy Kibaki Hospital where he succumbed to his injuries before treatment.
- 2 THAT the investigations that were immediately launched indicated that the deceased was assaulted by the Accused person herein over a claim that the deceased had stolen two litres of chang'aa from one Mama Boke a chang'aa vendor at Chokas area.

3. THAT during investigations it was established that after commission of the offence, the Accused person fled and relocated from Chokaa area in Ruai Sub-County to Mwiki Sub-County where he was arrested on 7<sup>th</sup> November 2024 after a four months long search.
4. THAT I established that after being traced in Mwiki, the accused relocated from the new address at Mwiki escaping arrest from the village elders who had mounted a search after being notified of his presence at Mwiki Sub-County.
5. THAT as the lead investigator in this case, he has established that the Accused person herein has no known fixed abode within the jurisdiction of this court noting that he had absconded his known home in Chokaa area for four months following the time of the commission of the offence.
6. THAT the conduct of the Accused person herein immediately after the incident, being that of fleeing from the scene and relocating with no known contacts is compelling reason, enough to suggest that if released on bond, he will not willingly subject himself to the jurisdiction of this honorable court effectively leaving the case in jeopardy.

7. THAT the Counsel on record for the state has advised that the nature of the charges facing the Accused persons herein are of a serious nature and that this, coupled with the above is incentive enough for the Accused person to flee from the court's jurisdiction if granted bond.
8. THAT the prosecution is ready and willing to expedite this matter each time the case comes up for trial.
9. THAT he prays that the Court does find that the above-mentioned reasons are compelling for this Court not to release the Accused person on bail pending the determination of this trial.
10. THAT the release of the accused person on bail pending the hearing and determination of the trial is not absolute and is at the discretion of the Court thus he urges the Court in view of the above reasons not to grant/release the Accused person on bail.

### **ANALYSIS & DETERMINATION**

The Accused person 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.

This Court has taken into consideration the circumstances of the case, as depicted by pleadings and reports filed.

This Court is alive to bail/bond terms are a constitutional right subject to compelling reasons; the Accused is presumed innocent until proved guilty and grant of bail/bond is to ensure the party attends Court.

However, I find absconding after the events culminating to the offence; the incident occurred 4/7/2024 and the Accused person was arrested on 7<sup>th</sup> November 2024 3 months later militates, his release on reasonable bail bond terms. He is a flight risk. After he fled from Chokaa Ruai, he has no fixed abode.

The law mandates in case of new developments, health life threatening circumstances, urgent matters that affect safety security well-being of the Accused person, then the Court is ready and willing to reconsider the same to ensure the Accused person enjoys bill of rights.

## **DISPOSITION**

- 1. Bail/bond denied at this stage until crucial witnesses testify and/or arrests of accomplices executed if possible**
- 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 9/2/2026 VIRTUALLY/PHYSICALLY**

**M.W. MUIGAI**

**JUDGE**