



**Republic v Masinde (Criminal Case E010 of 2025)
[2026] KEHC 1142 (KLR) (Crim) (9 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E010 OF 2025
MW MUIGAI, J
FEBRUARY 9, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

KLINZY BARAZA MASINDE ACCUSED

RULING

Information

1. The Accused Person KLinzy Baraza Masinde 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 of the offence being that on the 17th June 2025 outside Imenti House Nairobi Central Business District within Nairobi County he murdered Boniface Kariuki Mwangi.
2. The Mental Assessment report declared the Accused person as fit to plead.
3. The Trial Court had the Charge /Information read to the Accused person and he pleaded not guilty.

Notice Of Motion

2. On 15th August 2025 the Accused person filed a Notice of Motion seeking the following orders:-
 1. That Court be pleased to certify this application as urgent and fit to be heard on priority basis.
 2. That service of this application be dispensed with in the first instance
 3. That the court be pleased to release the Applicant on reasonable bond or cash bail terms, pending the trial of the Applicant in the above Criminal Case



4. That the court do make any other order it deems fit in the circumstances.
3. Grounds Of Application For Orders
 1. That the Applicant is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code to which offence he pleaded not guilty.
 2. The said offence is bailable and hence the Applicant is entitled to be released on reasonable bail/bond as of right pending the bearing and determination of the case.
 3. That the Applicant was the bread winner of his young family catering for all the basics for his two children and wife together with his sickly and old mother and for the period he has been in custody, his family has been living from hand to mouth which is threatening the disintegration of his family which will negatively impact most on the children and the sick and old mother.
 4. That the Applicant is a father of two young children who are school going children of tender years who have been in and out of school due to lack of finances and the wife who does not have any form of employment and was dependent on him has been unable to feed and provide for their education singlehandedly.
 5. That his sickly and old mother and who requires urgently and timely medical attention has and continues to suffer as a result of the applicant detention, the applicant having been his main source of help.
 6. The applicant who has been charged in the aforesaid Criminal Case, is Constitutionally entitled under Article 49 (1) (h) of *the Constitution* of Kenya to be released on bond or bail, on reasonable conditions, pending trial and there are no compelling or irresistible reasons why he should be denied bail as required by Article 49(1) (h) of *the Constitution* of Kenya.
 7. That under Article 50 (2) of *the Constitution* of Kenya, an accused person and in this case, the Applicant has a right to be presumed innocent until the contrary is proved.
 8. That this Court has the judicial discretion to ensure that the applicant's right to liberty and fair trial is protected pending trial by granting him bail.
 9. The Applicant the applicant is ready, able and willing to shade by any bond or bail terms and conditions that may be imposed by Court
 10. The applicant will not abscond and will attend all the proceedings whenever and wherever required.
 11. That the applicant has a fixed place of abode in Kayole and also at Bungoma all within the Republic of Kenya.
 12. That the applicant is not a flight risk.
 13. That the applicant will not interfere with witnesses in the case.
 14. That the applicant will not endanger the safety of the public.
 15. This application is bona fide, well merited, well founded and is made in the interest of justice and it would be fair and just to grant the orders sought.
 16. That no loss or prejudice will be suffered by the Respondent if the orders sought herein above are granted.



17. That unless bail is granted, the Accused person's children's lives and that of his mother will be utterly destroyed and justice will not be seen to have been done if it can destroy the lives of the two young children and his entire dependent family.
4. Supporting Affidavit Of Klinzy Barasa Masinde
 1. On 15th September 2025 the accused person filed a supporting affidavit and stated as follows:
 2. That he was informed by his advocate, VK YEGON and ABDIRAZAK MOHAMED, that all offences are bailable including serious offences as murder and that he is therefore entitled to be granted reasonable bail or bond as a matter of constitutional right and pray that the court grant him the same.
 3. That through his lawyer he made this application for bail pending trial of the aforementioned case and reiterated the particulars and details outlined in the Grounds For the Application and Orders outlined above.
 5. Accused's Person's Replying Affidavit In Opposition Of Bail
 1. That the averments contained as from paragraph 2-6 of the Affidavit to oppose Bond/bail are admitted as far as it is mere descriptive of the events leading to this case and the statutory investigative role /powers of the independent Policing Oversight Authority (IPOA)
 2. That am informed by my Advocates of record which information I believe to be true that the right to bail/bond is not absolute and where there are compelling reasons, the said right may be restricted. Nevertheless, *the constitution* expressly confers the said right and it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
 3. That I am equally informed by my Advocates on record which information I believe to be true that Article 49 of *the Constitution* of Kenya 2010 articulates the rights of the arrested persons and more so. Article 49(1)(h) categorically stipulates that an arrested person has a right to be released on bail or bond, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
 4. That the compelling reasons which might deny an accused person to be granted to bail and/or bond include, the Accused; being capable of failing to attend court, endanger the safety of victims, individuals, or the public. Interfere with witnesses or evidence, endanger national security or public safety, flight risk, serial offender, fleeing from Court's jurisdiction amongst other reasons.
 5. In the case of Republic vs Joktan Mayende & 4 Others (2012) eKLR, the Court stated that, "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 standards set by *the Constitution*."
 6. In the case of Republic V Danford Kabage Mwangi (2016) eKLR. the court while defining what amounts to compelling reasons stated that ".....compelling reasons grounds ought to be proved to the satisfaction of the Court, mere allegations or possibility is not enough. Bail cannot be refused simply because the accused has been charged with a very serious offence."



7. In the case of Republic V Muneer Harron Ismael & 4 others, HC Criminal Revision case NO. 51 OF 2009. Hon Warsame J (as he then was) stated that...

“ in deciding whether or not to grant bail, the basic factor or denominator is to secure the attendance of the accused person to answer the charges brought against him...”
8. That the contents contained in paragraph 17 and 18 of the Affidavit to oppose bond being granted to me are vehemently denied, I am advised by my advocates on record which advice I believe to be true that the idea that I should not be granted bail or bond for my own safety, security and good goes against my constitutional rights and that the court in Republic v Philip Anyanya, 2010 eKLR when faced with similar arguments stated that

“ ...I also reject the idea that the accused person should be remanded and not granted bail for their own safety, security and good. Any accused person released on bail has his constitutional rights secured and protected. No member of the public or any other person can try and punish him. This can only be done by a competent court with appropriate jurisdiction. The practice by sections of Kenyans society to kill or murder innocent persons only on mere suspicion or even upon a citizen's arrest of suspects for various perceived offences including practicing witchcraft by mob lynching torching etc in the so called "mob justice" is deplorable, criminal, unlawful. illegal and unconstitutional as a result, it would amount to a judicial aiding and abetting of this criminal trend of public murders or so called "mob justice" for the court to purport to deny bail to the accused so as to protect them from being lynched by members of the public..”
9. That the contents contained in paragraph 19 of the Affidavit to oppose bond being granted to me are vehemently denied. he has been advised by my advocates on record which advice I believe to be true that at this stage, the court cannot form an opinion on the direction the prosecution case may take as the court has not heard any of the witnesses and/or evidence and therefore the prosecution's fears are premature and that while flight risk is a legitimate concern, conditions can be set to mitigate the risk without resorting to pre-trial detention which offends his constitutional rights to liberty and fair trial.
10. That further to the above, I'm well aware that since the early 1980's. nobody in Kenya has ever been hanged even though many have been sentenced to death and therefore the fears of the state over the possible sentencing and particularly the deaths sentence is misplaced and I genuinely believe that the charges against me will be discharge in the long run.
11. In Godfrey Ngotho Mutiso Vs Republic (Msa) Criminal Appeal No.17 Of 2008, it was not mandatory for a person convicted of murder to be sentenced to death.
12. That the contents contained in paragraph 22 of the Affidavit to oppose bond being granted to me are vehemently denied. He undertakes to abide by all the directions and mitigations measures that the court might put in order to ensure that any crucial witnesses are protected and that he shall not in anyway, deliberately or otherwise interfere with any or all of the prosecution witnesses.
13. That in his entire life he has never committed any crime and arrested in relation to any crime or unlawful act and this is my first time I have been in such a situation.



14. That he is a family man with a wife and two kids who solely depended on me and since he was arrested, his family has immensely suffered due to his absence by the virtue of being their breadwinner.
15. That his children are school going children and, in several occasions, their education has been curtailed due to required school fees and other related school expenses and this has become a great burden to my wife to support the said children by herself.
16. That by being kept custody all this time will jeopardize his life as family man and also as bread winner to his family.
17. That he has a fixed place of abode and he undertake to attend trial faithfully without fail and that he undertake to abide by all the directions and mitigation measures that the court might put in order to ensure that any crucial witnesses are protected and that he shall not in anyway, deliberately or otherwise interfere with any or all of the prosecution witnesses.

6. Accused Persons Written Submissions

Application For Bail/bond Objection

The application for bail/bond was opposed by the Respondent who filed an Affidavit to oppose Bond dated 24th July, 2025 sworn by one Sarah Mwea, Assistant Director of Investigations, attached to the Independent Policing Oversight Authority (IPOA), Nairobi office and by one Jonah Kariuki Nyambura, the biological father of the deceased, dated 18th August, 2025. When this matter came up for mention the court gave directions to the parties to file written submission hence the writing of this instance submissions.

Issues Of Determination

Based on the foregoing, we humbly submit that there is wily one base for determination

- a. Whether the Accused/Applicant Application for Bail should be allowed.
 1. The law on bail in our jurisdiction is well settled. The overriding objective in all bail application is that it is a right to entitle an accused person to right to liberty pending the hearing and determination of his or her trial. This right to bail presumption of innocence on accused person under Article 50(2) of the all underscores *the Constitution* until the contrary is proved by the prosecution adducing evidence to that effect.
 2. 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.
 2. The Bail and Bond Policy Guidelines at paragraph 3.1 (d) underpins the right to reasonable bail and bond terms as follows:-
 - a) Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial.



- b) Accordingly, bail or bond terms should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.
3. The consideration in determining whether or not to grant bail are set out in Kenya Judiciary's bail and bond Policy Guidelines 2015 at paragraph 25 which set out judicial policy on bail as follows;
- (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 be persuade the court to deny the accused person bail, including the following;
- (b) That the accused is likely to fail to attend court proceedings; of
- (c) That the accused person is likely to commit, or abet the commission of, a serious offence; or
- (d) That the exception to the right to bail stipulated under Section 123 A of the Criminal Procedure Code is applicable in the circumstances; or
- (e) That the accused person is likely to endanger the safety of victims, individuals or the public; or
- (f) That the accused person is likely to interfere with the witnesses or evidence; or
- (g) That the accused person is likely to endanger national security; or
- (h) That is the public interest to detain the accused person in custody.
5. *The Constitution* of Kenya Article 50(a) states that every accused person is entitled to be presumed innocent until proven guilty. The burden of proof is upon the state and does not shift to the accused contrary and the only important issue for the court while determining whether to grant bail or otherwise is whether the accused will comply with the court order in attending trial. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond.
6. Equally, Section 123A of the Criminal Procedure Code States that before a person is released on bail or on his own recognizance, a bond for such sum as the court or police officer thinks sufficient shall be executed by that person, and when he is released on bail, by one or more sufficient sureties, conditioned that the person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer.
7. In Republic vs. Joktan Mayende & 4 Others Bungoma High Court Criminal Case No. 55 of 2009 the court defined the term "compelling reasons" as follows:-
- "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".



8. In Republic vs Wycliffe Nyakwana Nyamweya (Criminal Revision 135 of 2016) (2016) KEHC 7930 (KLR) (Crim), the court held that;

“It is therefore my view that the discretion to grant bail and set the conditions rests with the court. In all cases where the court is called upon to exercise its discretion in regard to whether or not it should grant bail pending trial, the most important consideration is whether the accused will attend court during trial”.
9. In Republic Vs. Doris Wambu Iguku & 2 others (2022) EKLR High Court at Nyeri Criminal case No. E003 of 2022.
10. In Republic vs Mbiti Munguti (2020) Eklr High Court at Kitui Criminal Case No. 25 of 2019 in paragraph 28 it was held that it's upon the prosecution to prove that there are compelling reasons to justify the court in limiting the applicant's otherwise constitutionally guaranteed rights. Such compelling reasons cannot be said to have been satisfied based on bare averments.
11. In the Republic vs. Peter Muia Mawia high Court at Machakos Criminal Case No. 48 of 2015 it was held that bail should not therefore be denied on weak grounds but on real and cogent grounds that meet the high standard set in *the Constitution*.
12. In Republic Vs. John Njuguna Maina & 2 others (2019) eklr the High court at Machakos Criminal Case No. 22 of 2018 it was held that any issues affecting the accused or the members of public an be taken care by the Police whose duty is maintenance of security to all citizens.
13. In Republic v Philip Anyanya, 2010 ekir when faced with similar arguments stated that:-

“I also reject the Idea that the accused person should be remanded and not granted bail for their own safety, security and good. Any accused person released on bail has his constitutional rights secured and protected. No member of the public or any other person can try and punish him. This can only be done by a competent court with appropriate jurisdiction. The practice by sections of Kenyans society to kill or murder innocent persons only on mere suspicion or even upon a citizen's arrest of suspects for various perceived offences including practicing witchcraft by mob lynching's, torching etc in the so called "mob justice" is deplorable, criminal, unlawful. illegal and unconstitutional as a result, it would amount to a judicial aiding and abetting of this criminal trend of public murders or so called "mob justice" for the court to purport to deny bail to the accused so as to protect them from being lynched by members of the public..”
14. Godfrey Ngotho Mutiso Vs Republic (Msa) Criminal Appeal No.17 OF 2008, which upheld that it was not mandatory for a person convicted of murder to be sentenced to death.

8. Victims' Submissions In Opposition Of The



Application For Bail Dated 15Th August 2025. Introduction

1. The Victims submitted that the circumstances of this case are the living embodiment of the "compelling reasons not to be released" provided for under Article 49 (1) (h). In the following submissions, the Victims will demonstrate that the public interest, blue code of silence, witness interference, influence wielded by the Applicant, and the strength of the Prosecution's case are overwhelming factors that ought to prompt this court to deny the Application for bail.

B. Seriousness Of Charge And Self-preservation.

2. While the charge of murder, (conspicuously in light of the coldblooded summary execution style of assassination of the deceased) is a grave charge automatically attracting the death penalty, it is arguable whether on its own it is a sufficient basis to warrant the denial of bail. It is why the Victims invite the court to consider the opinion of Justice Sitati in Republic v David Ochieng Ajwang alias Daudi & 11 Others (2013) eKLR who bears that,

“Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight...”

3. The argument advanced here by the Victims is that while seriousness of the present charge may not by itself automatically warrant denial of bail, the court ought to consider ripple effect the same has upon the human psychology, and instinct triggered by the likelihood of being sentenced to death. For this reason, such self-preservation forms are directly antithetical to the cause of justice which demands a full, unadulterated hearing, where all evidence is presented untampered, and witnesses are, without interference, allowed an opportunity to be heard. Releasing the Applicant at this stage is in all likelihood going to imperil this goal.
4. By the same token, we invite the court to consider that in the case of Republic v Ahmed Mohammed Omar & 6 Others | 2010 eKLR, where Ochieng J, referred to the case of John Zenus Ungapake Tembo & 2 Others vs The Director of Public Prosecutions. M.5.C.A. CR. Appeal No. 16 of 1995, decided by the Supreme Court of Appeal in Malawi, the court made deep cutting expressions, to wit,

Fear is a natural instinct in human beings, so that generally speaking, the more serious the offence; a capital offence for example, and the sentence it may call for upon conviction; the greater the likelihood that the Accused person would be disposed to abscond.....

C. Strength Of The Prosecution's Case

5. Section 123A is instructive that the strength of the evidence that the accused committed the offence is a relevant consideration towards denying bail.
6. The Victims submit that while in Republic Vs Joseph Thiong'o Waweru & 17 others [2017] KEHC 6426 (KLR) Justice Joel Ngugi conceded to this factor being a potential landmine to be navigated cautiously as it borders closely to the presumption of innocence, it still must be considered as a compelling reason that may lead to denial of bail.
7. In the circumstances at hand, the Independent Policing Oversight and Authority - the Independent legislative body charged with the mandate to hold the Police accountable to the



public in the performance of their functions - has filed an affidavit in opposition to bail dated 24th July 2025 in which it has independently certified that there is overwhelming proof that the accused person did in fact commit the offence of murder of the deceased herein, hence its report to the Office of the Director of Public Prosecutions recommending the present charge, Further, and of note, is that there are no other suspects or persons of interest in this matter other than the accused person. The affidavit also places on record material that points at witness interference, all which the court must consider.

D. Witness Interference.

8. The victims submit that the accused person is likely to interfere with witnesses should he be granted bail at this time. This position is supported by cogent and compelling facts, to wit: The accused person is a member of the disciplined forces. He possesses training that would be advantageous either in person or through proxy to contact witnesses who are known to him. He also has access to a wider network of other members of the police force, who actively helping their colleagues escape accountability either by suppressing evidence and intimidating witnesses, or simply overall are discouraged from incriminating other officers.

Justice Khavedza in Republic Vs Samson Kiprotich Taalam & 5 Others 2025 eKLR, in denying the accused persons bail, agreed with this position by observing that.

Para 51. "...The law requires proof of Interference in the sense of Influencing, compromising, Inducing, or Intimidating a witness so as to affect his or her testimony... Para 52. "...In the present case, I am persuaded that the fear expressed Is not speculative but real. The accused persons' positions as police officers, with residual authority and access to networks within the service, present a genuine and Imminent risk of Interference with key witnesses specifically those from the National Police Service and civilian witnesses. In the circumstances, I am Inclined to agree with the prosecution and find that the apprehension of witness interference is well-founded. I therefore, hold that this constitutes a compelling reason against the grant of bail to the 1st 2nd and 3rd accused persons."

In like manner, the Accused person, though interdicted retains influence, and ties within the National Police Service, all of which can be leveraged to defeat justice upon being admitted to ball.

9. Further, in light of the brazen manner in which the deceased person was shot by the Applicant, releasing him at this point is likely to send a chilling message to witnesses against testifying, out of fear that a similar fate might befall them.

E. Public Interest

10. The Victims submit that the right to bail is not absolute and the same may be denied, in circumstances such as these, where granting the same is highly likely to undermine public confidence in the administration of justice. The tragic shooting of Boniface Kariuki did not only lead to the unfortunate loss of life, but also to public rage across the country. reflecting the gravity with which the nation received this horrific news.

11. In Republic vs Taalam & 5 Others (Supra). Khavedza J found as follows. Para 59.

“Paragraph 59 “ Public Interest is a recognized consideration in ball Jurisprudence. While the constitutional presumption is that an accused person shall be released on reasonable bond



or bail terms pending trial, Article 24 of *the Constitution* permits the limitation of rights where such limitation is reasonable and Justifiable in an open and democratic society. The courts have consistently held that in certain cases, public order and the preservation of peace may amount to compelling reasons to restrict liberty. The balancing exercise must therefore weigh the Individual right to bail against the collective Interest of society in maintaining order, security, and confidence in the administration of Justice”.

12. To bolster this argument, the Victims submit that Guideline 4.9 (K) of the Bail and Bond Policy Guidelines is instructive that "Pretrial detention may be necessary to preserve public order where it is demonstrated that the public response to an offence is such that the release of the accused person would be likely to lead to a public disturbance.
13. The public has been following every step of this journey, from the moment Boniface Kariuki was shot with impunity, rushed to hospital, taken in for surgery, declared brain dead, and ultimately passed on. The nation has stood in solidarity with his family, and even went to see him in hospital when they could. In these circumstances, the death of Boniface is still a fresh wound in the conscience of the nation, and releasing the only suspect in his murder would erode the already dwindling confidence the public may have in the judicial system. As such, the collective interest of the society in this case immediately and inarguable outweigh the Applicant's right to bail.

Respondents Written Submissions In Opposing Bail/bond Application

14. The Republic opposes the said application relying on the Affidavit sworn on 24th July 2025 by Sarah Mwea, Assistant Director of Investigations at IPOA, as well as the Affidavit of the deceased's father, Jonah Kariuki Nyambura.
15. In Republic vs. Muneer Harron Ismail & Another [2018] eKLR, the Court observed that where evidence against an accused is strong and conviction probable, the risk of absconding increases significantly.
16. In Republic vs Danford Kabage Mwangi [2016] eKLR, the court held that the more serious the offence and penalty, the greater the incentive for the accused to abscond.
17. In Republic vs Dwight Sagaray & 4 Others [2013] eKLR, the Court held that interference with witnesses, whether directly or indirectly, constitutes a compelling reason to deny bail.
18. In Republic vs Fredrick Ole Leliman & 4 Others (the Willy Kimani Case) [2016] eKLR. the Court denied bail to Police Officers facing murder charges on grounds of public interest, seriousness of offence, and likelihood of interference with witnesses.
19. In Ng'ang'a vs Republic [1985] KLR 451, the Court held that:

“ The primary consideration is whether the interests of justice will be served by granting bail.”
20. In Republic vs Muneer Harron Isamil & Another [2018] eKLR, the Court observed that where evidence against an accused is strong and conviction probable, the risk of absconding increases significantly.
21. In Republic vs Joram Mwenda Guantai [2001] eKLR, the Court stressed that bail decisions must balance the accused's rights with the rights of victims and the wider public interest.

Analysis & Determination

22. The issue for determination is grant or denial of bail and bond to the Applicant/Accused person.



The Court has considered detailed and extensive pleadings oral and written submissions by respective parties, learned Counsel for Applicant, Respondents; Office of Director of Public Prosecution (ODPP) & Independent Police Oversight Authority (IPOA) and Victims particularly father of the deceased.

23. The role of the Court in determining applications of bail/bond entail determining cases for grant of bail and bond includes consideration of special interests; vulnerable offenders, and victims of crime and adherence to the Law on Bail and Bond pending Trial settled as follows;

The right to bail pending trial is not absolute; bail can be denied if there are compelling reasons to warrant denial of bail.

"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

24. Article 49(1) (h) of *the Constitution* Duty lies on the Prosecution to demonstrate compelling reasons justifying denial of bail.

Bail is a constitutional right enshrined in Article 49(1)(h) of *the Constitution*.

25. Section 123 & 123A & Sections 123 – 132 Criminal Procedure Code and Bail & Bond Policy Guidelines of 2015 provide guidance on consideration of bail & bond Application. Clause 4.9 & 4.26 are detailed and instrumental in guiding the Court in the process of determination of grant of bail and bond.

26. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P 16 4.9 & P. 25 -4.26 which sets out judicial policy on bail/bond thus:-

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. The need to protect victim(s) of crime; the relationship between the Accused person & potential witnesses. The relationship between the Accused person and potential witnesses.

"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:-
- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or



- f. That the accused person is likely to interfere with witnesses or evidence; or
 - g. That the accused person is likely to endanger national security; or
 - h. That it is in the public interest to detain the accused person in custody.”
27. Article 24(1) Constitution provides for limitation of a right or fundamental freedom (such as refusal of bail) must be ‘reasonable and justifiable in an open and democratic society...’.

Compelling Reasons

28. Compelling reasons were considered in Michael Juma Oyamo & Anor vs Republic [2019] eKLR & Patius Gichobi Njagi & 2 Others vs Republic [2013] eKLR; Rep v Joktqan Mayende & 3 others [2012] eKLR; compelling reasons denote reasons that are forceful and convincing and persuasive argument backed by facts and experiences and circumstances unique to each individual case.
29. Compelling reasons should be demonstrated on a balance of probabilities, to justify for denial of bail, the Prosecution must state the reasons to justify denial of bail.
- The test the Court is required to use to deny bail in appropriate cases is similarly stated in Article 49(1) (h): it is only upon the showing of compelling reasons by the Prosecution that the Court will deny bail.
30. The Accused is entitled to disclosure of any information relied upon by Prosecution unless there is good reason e.g. national security, victim protection.
31. Bail reports are considered to aid the Court consider the appropriate order pertaining to the instant case or circumstances.
32. Prosecution and Defense and/or the Accused have opportunity to respond to claims by Prosecution or Victims to have opportunity to contest report findings.
33. Victims of crime to have an opportunity to submit information relevant to decision to grant bail and bond.

Applicant’s Submission

34. The Applicant filed Affidavit in Reply to Affidavit by Investigator opposing bail/bond being granted. The law provides for release of bail and bond unless compelling reasons are advanced by Prosecution. The compelling reasons relate to conduct of trial which has not commenced and he is entitled to a fair trial.
35. The Applicant is ready, able and willing to comply bond or bail terms and conditions that may be imposed by Court. The Applicant will not abscond and will attend all the proceedings whenever and wherever required.
36. That the applicant has a fixed place of abode in Kayole and also at Bungoma all within the Republic of Kenya. That the Applicant is not a flight risk. That the Applicant will not interfere with witnesses in the case. That the applicant will not endanger the safety of the public.

Office Of Public Prosecution (ODPP)

37. The Prosecution through submissions filed 16/9/2025; compelling reasons outlined included; The Applicant is a flight risk; he is well trained and conversant with investigative procedures, police networks and knowledge to evade detection.



38. The Prosecution submitted that the Applicant may interfere with witnesses and tamper with evidence. The Affidavit of Investigation officer disclosed witnesses who include Police Officers junior to the Applicant; there are Civilian witnesses who have expressed fear for their safety; the Applicant retains knowledge, skills and access to Police systems to trace threaten and/or intimidate witnesses.
39. The Prosecution submitted that there is public interest and security concerns regarding release of the Applicant on bail/bond. The unique circumstances that led to fatal shooting were in the public domain it was during public demonstrations and attracted widespread public outrage.
40. The Prosecution submitted the seriousness of the offence and evidence to be adduced disclose the gravity of the offence.
41. The Prosecution submitted that the deceased's family suffered irreparable loss and expressed opposition to grant of bail/bond. The premature and pretrial release of the Applicant would undermine legitimate expectation of justice
42. Independent Policing Oversight Authority (IPOA) presented Affidavit in opposition to [grant] of bail/bond through Lead Investigation Officer Sarah Mwea and in a nutshell in paragraphs 7-9 outlined investigations disclosed Law Enforcement Officers accosted an innocent bystander (deceased) and unique circumstances unfolded leading to Deceased's demise.
43. As a Law Enforcement Officer, the Applicant holds considerable authority, influence, access to guns, thus there exists real and substantial risk of interference with key witnesses, some of whom are fellow Police Officers who witnessed the fatal shooting.
44. Several civilian witnesses expected to testify have expressed fear for their lives. Their exposure and vulnerability increases the probability [and apprehension] that the Accused may attempt to threaten, intimidate or otherwise interfere with them through various means if granted bail. The Investigator annexed copy of the letter addressed to Witness Protection Agency seeking assistance to protect 2 witnesses.
45. The Applicant having been served with the committal bundles and the contents therein, the Applicant maybe tempted to flee from the jurisdiction of the Court

There exists public interest in this matter, and releasing the Applicant at this point, may erode public confidence in the Criminal Justice System.

Victims Report

46. Counsel for Victims submitted from the Report; the matter attracts strong public interest stemming from the unique circumstances of the matter. The family of deceased have had their phones jammed with calls/SMS messages castigating them and the family raised concern of their safety and security and fear of being victimized. If released on bail/bond the Accused person may utilize knowledge skill resources and networks as he is still an employee of National Police Service.

Probation/aftercare Services Pre-bail Report

47. Filed on 3/11/2025 outlines sources of information in the introduction; Applicant's family background both immediate and extended family members. They vouched for Applicant's character and whereas they recognize the seriousness of the offence supported Applicant's release on bond and proposed family member as surety and to ensure Applicant's compliance with bond terms and conditions. The Applicant has a young family of children of tender years and urgent need for their safety and care.



48. Community ties; Chief and Local Administrators confirmed Applicant's permanent residence and strong family ties. Immediate Supervisors averred the Applicant as diligent Officer with no disciplinary issues.
49. The Victims; Parents of the deceased reported that the death of their son; eldest and only son has had far reaching psychological social and economic impact on the family; their son was not only gaining independence but was helping his parents to raise other children of the family. They oppose release to bail of the Applicant bail /bond as their pain is still fresh and re-ignites their psychological wounds. The family is concerned that given the public case generated, they maybe victimized by the Accused person or any persons that may be out to revenge.
50. The Probation Officer proposed that if the Court is inclined to grant the Accused person bail/bond based on findings, the Court needs to set stringent terms to mitigate against victim concerns and public interest.
51. The main consideration in grant of bail and bond is whether the Accused person will attend Court and the Accused person is presumed innocent until proved guilty [through trial].
52. In the instant matter parties through Counsel have presented the law on bail and bond but rival submissions on whether to grant or not grant bail.
53. The right to bail is not absolute if the Prosecution presents compelling reasons to deny the Accused person's Constitutional right to bail of bond, the Court will consider if they are mere allegations or the circumstances presented are convincing and persuasive forceful and undeniable.
54. As alluded to by Parties/Counsel oral and written submissions and pleadings filed; the special peculiar and unique circumstances that culminated with the demise of the deceased; occurred in public domain and glare; during public demonstrations and resulted in the public's hue and cry and the stakes are high. These circumstances cannot be ignored or swept under the carpet but will be considered alongside other facts presented at this stage.
55. On the one hand, the Applicant is entitled to personal liberty awaiting trial; the nature and seriousness of the offence; murder and strength of evidence shall be considered by the Trial Court. The character and antecedents of Accused person; none have been disclosed or presented.
56. In determining grant or not grant bond the Court aims to balance the individual liberty rights of the Applicant/Accused person and/against interests of victims, effective administration of criminal justice system and concerns and safety of the wider community. In exercising discretion, the Court must seek to strike a balance between protecting the liberty of the individual and the interest of justice. *Grace Kananu Namulo vs Republic* [2019]eKLR
57. The victims; family of deceased under Section 9(2) of Victims Protection Act that provides; are entitled
 - Where the personal interests of a victim have been affected, the Court shall—
 - (a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and
 - (b) ensure that the victim's views and concerns are presented in a manner which is not—
 - (i) prejudicial to the rights of the accused; or
 - (ii) inconsistent with a fair and impartial trial.



and the victims informed the Court through Legal Representative/Advocate that they felt threatened their safety and security should be protected as they were bombarded by sms and phone calls by unknown persons since the incident occurred and were castigated.

58. ODPP & IPOA detailed their concerns as outlined above mainly in relation to possibility of Accused person's release may interfere with prosecution witnesses who are scared intimidated to testify and the Accused person's experience and exposure may influence witnesses or evidence. They attached a letter to Witness Protection Agency on protection of 2 witnesses.
59. Republic V Joktan Mayende & 3 others [2012] KEHC 5551 (KLR) described administration of public justice thus;
- (25) Administration of public justice particularly in criminal sphere includes the process of adjudication as well as investigation of offences. On this, the following words of Mac Dermott, Lord Chief Justice in the case of Reg. v Bailey [1956] NI 15 at p. 26 are most apt:
- “The administration of public justice, particularly in the criminal sphere, cannot well be confined to the process of adjudication. In point of principle we think it comprehends functions which nowadays belong to, in practice almost exclusively, to the police, such as the investigations of offences...”
60. Ochieng, J (as he then was) in Republic Vs. Ahmed Mohammed Omar & 6 Others [2010] eKLR stated;
- It would thus hurt not merely society's sense of fairness and justice, and more so, the kith and kin of the victim, to see a perpetrator of murder, treason or violent robbery (committed or attempted) walk the street on bond or bail pending his trial. charge of murder, treason, robbery with violence (committed or attempted) would thus be a compelling reason for not granting an accused person bond or bail.’
61. In the instant case; this Court considers 3 particular issues; Public order peace and security; the present case arose from circumstances that occurred within the Public sphere; there were ongoing public demonstrations; in the process of maintenance of law and order by Law Enforcement, the deceased was killed. There public outcry; media coverage and subsequent follow-up of unfolding events as submitted by victims culminating with the present proceedings. In such circumstances Public order, peace and/or security is one of issues for consideration in Bail and Bond Guidelines 2015 Clause 4.9 (K) Pre-trial detention maybe necessary to preserve public order where public response may lead to public disturbance. Republic v Pascal Ochieng Lawrence [2014] e KLR & Taalam & 5 others (Criminal Case E010 of 2025) [2025] KEHC 13505 (KLR)
62. Possible interference with potential witnesses; where the Defense is provided with the committal bundle and witnesses to testify and nature of evidence is disclosed; there is real likelihood of the Accused person directly or indirectly interfere, intimidate, contact, threaten, influence witnesses. This likelihood could probably inflict genuine fear and anxiety to the potential prosecution witnesses. The Applicant is trained exposed and has experience in Law enforcement and investigations, possibly directly or indirectly interfere with witnesses upon release on bail/bond some witnesses are workmates as alluded to by ODPP others civilians but fearing to testify for their safety and ODPP has written to Witness Protection Agency. Republic vs Joseph Wambua Mutunga & 3 Others [2010] eKLR
63. Protection safety and security of the family of deceased /victims as provided by Section 10 of Victims Protection Act



That provides;

A victim has a right to—

- (a) be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- (b) have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- (c) have their property protected.

64. It is on record that the family of the deceased has been in the media and whilst there received phone calls and sms by unknown persons castigating them on following up the matter to its logical conclusion. They opposed release of the Applicant on bail /bond as the incident loss of their son is still fresh recent and painful, they are apprehensive of interference of witness evidence and/or hearing process. Having been exposed in the public domain they fear for their safety and security. The Court will err on the side of caution and protect victims and witnesses until trial commences and proceeds and thereafter bail and bond may be reconsidered by the Trial Court.

65. R V Joseph Wambua Mutunga & 3 Others [2010] EKLR.

In this case I find that there is a real possibility of the accused making contact with the potential witnesses, if they are granted bail. That could probably inflict genuine fear and anxiety in the potential prosecution witnesses, especially because the accused persons know not only their respective identities, but also the nature of the evidence which each witness is expected to tender to the trial court.

66. Republic V John Kahindi Karisa And 2 Others, Mombasa High Court Criminal Case No. 23 Of 2010 (UR)

“The respondents have a right to enjoy their fundamental rights and freedoms, but it is my humble view that Kenyans and aliens of good will also have a right to the quiet enjoyment of their rights, and to go about their daily business without threat to life or limb, and without being placed in harm’s way.”-

67. Rep Vs. Dwight Sagaray & others High Court Criminal Case No. 61 of 2012, Milimani. In that case R. Korir, J. stated what the prosecution needed to adduce in order to persuade the court that the accused was likely to interfere with witnesses thus:

“For the prosecution to succeed in persuading the court on this criterion (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.”

68. In Republic Vs. Joktan Mayende & others [2012] eKLR, where Gikonyo, J. stated as follows:

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. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.

Bail determination should balance the rights of the Accused person and interest of justice while ensuring safety and security of the victims and/or witnesses. To strike the balance in the instant case from the pleadings and submissions disclose urgent need to protect crucial vulnerable witnesses to testify first, the bail and bond shall be reconsidered. The trial shall be expedited.

69. The caselaw above depict situation that warrant denial of bond. For the reasons advanced by the Prosecution, the court finds there are compelling reasons demonstrated in relation to possibility of interference with witnesses, protection safety and security of Victims and maintenance of public order peace and security. The Prosecution has presented Affidavit by Investigator that confirms witnesses are fellow colleagues and vulnerable witnesses who fear for their safety and security. The ODPP also wrote to the Witness Protection Agency on safeguarding 2 witnesses.

Disposition

1. For now, the Bail and Bond application is denied to protect victim family members, crucial vulnerable and/or key witnesses whom according to ODPP/IPOA reports fear harm and will prevent witnesses possible interference.
2. These provisions of bail and bond do not limit the number of times request for bail or bond may be made as was stated in Republic vs Ahmad Abolafathi Mohammad & Anor 2013 eKLR.
3. The Trial Court to consider expedition of the trial and vulnerable witness(s) testify on priority basis first.
4. The Court file shall be placed in Court No 1 Trial Court through Deputy Registrar Criminal Division on 17/2/2026 on the way forward.

RULING DELIVERED DATED & SIGNED IN OPEN COURT CRIMINAL DIVISION HIGH COURT NAIROBI ON 9/2/2026.

M.W.MUIGAI

JUDGE

In The Presence Of :

Ms. Wangui holding brief for Mr. Yego for Accused person

present online

Mr. Mbugua holding brief IPOA – present online.

