



REPUBLIC OF KENYA



**Republic v Ogacha (Criminal Case E022 of 2025)  
[2026] KEHC 1823 (KLR) (9 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1823 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E022 OF 2025  
JM OMIDO, J  
FEBRUARY 9, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KEVIN OMONDI OGACHA ..... ACCUSED**

**RULING**

1. Kevin Omondi Ogacha, the accused person herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya. He denied the charge.
2. The accused person has now moved this Court seeking to be admitted to bail pending trial pursuant to Article 49(1)(h) of *the Constitution*, which guarantees every accused person the right to be released on bond or bail on reasonable conditions unless there exist compelling reasons that would necessitate their continued detention.
3. This Court is therefore required to examine whether the prosecution, which opposes the application, has discharged its constitutional burden of demonstrating such compelling reasons, bearing in mind that bail is a right and its limitation must be justified through clear, cogent and admissible evidence.
4. In the present matter, the prosecution has filed an affidavit sworn on 9<sup>th</sup> October, 2025 by the investigating officer, Police Constable Adan Sharamo, who depones that there are compelling grounds as to why the accused person should not be granted bond at this stage.
5. In his affidavit, the investigating officer has raised the ground that the accused person does not have a known permanent residence and that he has demonstrated a pattern of continuous relocation that evidences instability and inability to maintain fixed ties to any community. Specifically, the deponent states that the accused person has previously relocated from Nyakach area to Nyalenda in Kisumu town and thereafter to his rural home in Nyakach and subsequently to Katito area.



6. The officer urges that this pattern of repeated relocation demonstrates the accused person's propensity for mobility and lack of community anchoring and thereby creating a substantial risk of flight and material risk t and that as such, there exists a significant risk that he may not turn up for trial, noting the gravity of the offence and the possible sentence.
7. The second ground that Police Constable Sharamo has presented in his affidavit is that there is a likelihood that the accused person may interfere with the key witness in the trial, one F.O. (name withheld), an eight-year-old child, who currently resides under the custody of the accused person's uncle. The officer's apprehension is that the accused person's familial relationship with the witness may present fertile ground for him to threaten, coerce or otherwise interfere with the witness.
8. The third ground presented in the affidavit in opposition to grant of bond is that there is opposition from the deceased victim's relatives, who have voiced concerns that the accused person may interfere with witnesses if he is granted bond, particularly F.O., who is the accused person's son.
9. The fourth reason as to why bond is opposed, as presented by the investigating officer, is that the pre-bail report filed herein by the probation officer, dated 15<sup>th</sup> September, 2025 finds the accused person to be unsuitable for bond and recommends that he be considered for bond after F.O. has testified.
10. The investigator urges that the above comprise compelling grounds as to why the accused person should not be granted bond.
11. The accused person filed a replying affidavit which he swore on 8<sup>th</sup> November, 2025, resisting the depositions made by the investigating officer.
12. In his affidavit, the accused person denies the investigating officer's allegations that he poses a threat to witnesses and that he has no fixed place of abode.
13. The accused person states that he is a law-abiding citizen with strong family and societal ties and that he has no intention to relocate or flee to evade trial. He has stated that his home is in Nyakach, where he has lived with his family for several years and that the alleged "pattern of relocation" arises from his work/business obligations which require occasional movement but his base and permanent place of residence remains to be Nyakach.
14. The accused person further states that he has fully cooperated with the police throughout the investigations and has attended all required sessions when summoned and has remained reachable to the investigators. He states that at no time has he been on the run or gone into hiding.
15. In his further depositions in the replying affidavit, the accused person denies that members of his family are apprehensive that he will interfere with witnesses, a claim he terms to be baseless and speculative. He states that no specific instance or complaint has been placed before the court to demonstrate any attempt to contact, threaten, influence or otherwise interfere with any witness.
16. In his affidavit, the accused person undertakes not to contact or in any way interfere with witnesses and further that the court may attach conditions which may include ordering him to report to the police, restraining him from contacting witnesses and residing at a place known to the investigating officer, whereby he will divulge to the latter the relevant information.
17. The accused person states that the prosecution has not presented grounds that are compelling enough for him to be denied bond.
18. Having considered the affidavits, the Court frames the following issues for determination:



- a. Whether the prosecution has established compelling reasons for denying bail/bond to the accused on the grounds that he is a flight risk.
  - b. Whether there is a likelihood that the accused may interfere with the key witness, F.O., and other prosecution witnesses.
  - c. Whether the interests of justice and public interest justify denial of bond pending trial until after the testimony of F.O.
  - d. What orders, if any, should issue in respect of bond at this stage.
19. I will proceed to determine the issues seriatim.
  20. The first issue for me to address is whether the prosecution has established compelling reasons for denying bail/bond to the accused on the grounds that he is a flight risk.
  21. An accused person charged with an offence is presumptively entitled to bond under Article 49(1) (h) of *the Constitution*, which provides that a person shall be released on bond or bail on reasonable conditions, pending trial, unless there are compelling reasons not to be released.
  22. The prosecution bears the burden to demonstrate the existence of compelling reasons on a balance of probabilities to justify a limitation of this right. See *Republic v Kisakwa* [2013] eKLR, *Walford Ngugi & 2 others v Republic* [2017] eKLR, and *Republic v Ahmed Mohammed Omar & 6 others* [2010] eKLR.
  23. The phrase “compelling reasons” denotes reasons that are forceful, convincing and strong enough to satisfy that the accused should not be released. Mere speculation, allegations or conjecture are not sufficient.
  24. In determining whether compelling reasons exist, courts consider the nature and seriousness of the offence, the character, antecedents and community ties of the accused, the likelihood of interference with witnesses or evidence, the risk of absconding and public interest interests, among other factors. This list is however not exhaustive.
  25. The prosecution’s case is that the accused lacks a fixed residence and has exhibited a “pattern of relocation” which allegedly indicates instability and propensity to abscond.
  26. While irregular accommodation or relocation can be a factor, it cannot in itself amount to a compelling reason unless corroborated by specific evidence of intent to evade justice or past default. Allegations of flight risk must be supported by evidence, not conjecture.
  27. Here, the accused has provided an affidavit outlining his work-related movements and affirming that his permanent residence is in Nyakach. There is no evidence of past bond breaches or attempts to abscond. Consequently, on the evidence before the Court, the prosecution has not established a compelling risk of non-appearance. Accordingly, the Court finds that the flight risk allegation, in itself, does not satisfy the compelling reasons threshold.
  28. The second issue for determination is whether there is a likelihood that the accused person may interfere with the key witness, F.O., and other prosecution witnesses.
  29. The investigating officer’s concern is that the accused person may interfere with or influence the child witness, F.O., who is the accused person’s son and who resides with the accused’s uncle, and other witnesses.



30. The possibility of witness interference is recognized as a potential compelling reason, particularly where the accused has familial or close relationships that enable influence.
31. However, a finding of likelihood of interference must be supported by credible, specific and admissible evidence demonstrating a real risk which cannot be mitigated by reasonable conditions of bond. Mere apprehensions or generalized fears, without evidence of specific attempts or credible threats, are insufficient. Unsupported allegations of interference do not meet the compelling reasons threshold.
32. In the present matter, the investigating officer's affidavit generally states that the accused might threaten or influence the child witness but does not provide specific instances or verified complaints showing attempts at interference. The victim's relatives' concerns, while understandable, are not evidence of actual interference.
33. The third issue for me to determine is whether the interests of justice and public interest justify denial of bond pending trial until after the testimony of F.O.
34. The foregoing findings notwithstanding, the vulnerability of the key witness (a minor) and the close familial connection present a prima facie risk which, on the evidence, cannot at this stage be confidently mitigated by conditions alone, especially in the absence of protective measures already taken.
35. The view I take is that that considering that F.O. is a son of the accused person and that ordinarily parents have profound influence over their children, particularly minors, there is sufficient ground to justify denial of bail pending F.O.'s testimony, particularly in the wake of the information that the child's testimony is central and may not readily be insulated from influence without having testified. This Court therefore finds that there is a substantial risk of interference that cannot be adequately managed by ordinary conditions at this stage.
36. The administration of criminal justice demands that witness testimony, particularly from vulnerable persons such as children, be obtained in a setting free of intimidation, interference or undue influence. This Court must ensure that the interests of justice are not prejudiced by the premature release of an accused where credible risk exists that may hamper the integrity of the trial.
37. While the presumption of the accused person's innocence remains paramount, it must be balanced with the need to protect the justice process. The accused's proposed undertaking not to interfere with witnesses is noted. However, without the testimony of F.O. having been secured, the Court cannot reliably enforce or monitor such undertakings.
38. For the foregoing reasons the Court finds that compelling reasons exist to justify denial of bond at this stage, principally due to the real risk of interference with the key witness, F.O., which cannot yet be effectively mitigated by conditions of bond.
39. The foregoing being my findings, the accused's application for bond is hereby declined at this stage. However, the accused person may, if so advised at a later stage, reapply for consideration of bond after F.O. has testified, or upon such further evidence as may then be placed before the Court.
40. The hearing of the matter will be on 13<sup>th</sup> April, 2026 for F.O.'s evidence.

**DELIVERED, DATED AND SIGNED THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**JOE M. OMIDO**

**JUDGE**

Accused Person: Present.



Prosecution Counsel: Ms. Muema.

Defence Counsel: Mr. Okoth Oluoch.

Court Assistants: Mr. Ngoge & Mr. Juma.

