

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CRIMINAL CASE NO. E024 OF 2025

**REPUBLIC.....PROSECUTION
COUNSEL**

VERSUS

**WYCLIFFE OTIENO OPONDO alias MANDU.....
ACCUSED**

RULING

1. **Wycliffe Otiemo Opondo alias Mandu**, 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 by the investigating officer, **Police Constable Fredrick Oyugi**, 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 is likely to face hostility from members of the community where the alleged offence was committed as tension remains high.
6. The second ground that the investigating officer raises is that if released, the accused person is likely to interfere with witnesses. The officer has given a case in point where he states that a key witness namely **Peter Onyango Kasera** was on 25th September, 2025 accosted and assaulted at Muhoroni township by four persons believed to be agents of the accused person and that the incident was reported to Muhoroni Police Post vide Occurrence Book No. 14/27/9/2025. Investigations on the same are ongoing.
7. The third reason as to why the prosecution opposes the release of the accused person on bond is for his own security. The investigating officer states in his affidavit that if released, the accused person is likely to face mob violence and harm as the nature of the alleged offence has provoked significant

public outrage and unrest and that his release may undermine public order and erode confidence in the administration of justice.

8. The officer urges that it is in the interest of justice, peace and stability that the accused person remains in custody until his trial is concluded.
9. The foregoing, in the investigating officer's view, amount to compelling reasons that would warrant the denial of bond.
10. The accused person filed a replying affidavit which he swore on 28th October, 2025, resisting the depositions made by the investigating officer.
11. In his affidavit, the accused person denies the investigating officer's allegations that he poses a threat to witnesses and is emphatic that he is not aware of any threat or attack on any witness or any connection thereto. He states that the allegations that the named witness was assaulted by assailants believed to be by his agents are false and based purely on speculation and conjecture.
12. The accused person states that he is a law-abiding citizen with deep respect for the law and the judicial process.
13. 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.

14. The accused person states that the prosecution has not presented grounds that are compelling enough for him to be denied bond.

15. From the record and the affidavits filed herein, the Court is of the considered view that the following issues arise for determination:

a. Whether the prosecution has established compelling reasons to warrant denial of bond to the accused person.

b. Whether, on a balance of probabilities, there exists a likelihood of interference with witnesses, particularly arising from the assault report made by **Peter Onyango Kasera**.

c. Whether, in the circumstances of this case, the interests of justice justify denial of bond at this stage.

16. I will proceed to determine the three issues together.

17. The right to bail is guaranteed under *Article 49(1)(h)* of the *Constitution*. However, that right is not absolute and may be limited where the prosecution demonstrates the existence of compelling reasons.
18. The burden of proving such reasons lies with the State (see ***Republic v Ahmed Mohammed Omar & 6 Others [2010] eKLR*** and ***Republic v Kennedy Ochieng Kisakwa [2013] eKLR***) and the standard of proof is on a balance of probabilities (see ***Walford Ngugi & 2 Others v Republic [2017] eKLR***).
19. What amounts to compelling reasons depends on the peculiar facts of each case and may include the likelihood of interference with witnesses, public order considerations or the interests of justice (see ***Republic v Frederick Ole Leliman & 4 Others [2016] eKLR*** and ***Republic v Joktan Malende & 3 Others [2009] eKLR***).
20. As to whether the accused person is likely to interfere with witnesses if released on bond, the gravamen of the prosecution's opposition to bond rests on the allegation that a key witness, **Peter Onyango Kasera**, was accosted and assaulted by persons believed to be agents of the accused person, an incident reported at Muhoroni Police Post under OB No. 14/27/9/2025. Investigations into the report are stated to be ongoing.

21. The accused person has denied any involvement or knowledge of the alleged assault and contends that the allegation is speculative and unsubstantiated.
22. At this stage, the Court is not called upon to determine culpability in respect of the alleged assault. That is a matter squarely within the mandate of the investigating agencies. However, the Court is enjoined to assess whether, on the material placed before it, there exists a real and not fanciful likelihood of interference with witnesses if the accused is released on bond.
23. The likelihood of interference with witnesses constitutes a compelling reason to deny bail, particularly where the allegations disclose intimidation, threats or violence directed at witnesses.
24. In the present case, there is a formal report made to the police by a named witness alleging assault linked to the accused person. While investigations are ongoing and no findings have been made, the existence of such a report, viewed against the seriousness of the charge and the proximity of the witness to the case, raises a legitimate concern that the integrity of the trial process may be imperilled if the accused is released at this stage.

25. On a balance of probabilities, and without making any adverse findings against the accused, the Court is persuaded that the prosecution has demonstrated a likelihood of interference with witnesses sufficient to meet the compelling reasons threshold.
26. With regard to the other grounds raised by the prosecution, which include concerns regarding possible hostility from the community and the accused person's personal security, while public outrage and community tension may be relevant considerations, such factors must be approached with restraint, as they can easily be invoked without sufficient evidential backing. In this case, the Court places limited weight on these grounds.
27. The decisive factor remains the unresolved allegation of assault on a key witness and the need to safeguard the administration of justice pending the outcome of investigations.
28. The Court reiterates that denial of bond is not punitive and does not derogate from the presumption of innocence. It is a temporary measure aimed at preserving the integrity of the trial process, as was held in the case of ***Republic v Danson Mgunya & Another [2010] eKLR***.

29. Given that investigations into the alleged assault are ongoing, it would be premature and potentially prejudicial to the trial to release the accused on bond before clarity is obtained as to whether the accused bears any responsibility in respect of the reported interference.

30. In the premises, the Court makes the following orders:

a. The accused person's application for bond is declined at this stage on the ground that, on a balance of probabilities, the prosecution has established a likelihood of interference with witnesses arising from the assault report made by Peter Onyango Kasera.

b. The Court directs that it is prudent for the reported assault to be fully investigated by the relevant authorities.

c. The accused person is hereby granted liberty to reapply for bond once investigations into the assault report are concluded and should no culpability be established on his part, or upon any material change in circumstances.

31. The hearing of the matter will be on 8th June, 2026. The prosecution to appraise the court on the status of the investigations on that day.

DELIVERED, DATED and SIGNED this 9th 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.**