

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL CASE NO. E014 OF 2025**

MERCY WANGARE  
NJOROGE.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....  
PROSECUTOR

**RULING**

1. The accused person is charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code (Cap 63, Laws of Kenya). The particulars of the charge are that on the night of 14 August 2025 at about 0100 hours at Jemima's Plot within Nduaru Area in Dagoretti Sub-County within Nairobi County, she murdered Dennis Irungu Macharia. The accused took plea and entered a plea of not guilty and now seeks to be admitted to bail or bond on reasonable terms pending trial.
2. The application is opposed by the State through an affidavit sworn by Police Constable Felix Owino dated 22<sup>nd</sup> October 2025. The State contends that immediately after the commission of the offence, members of the public attempted to lynch the accused and that she was only rescued by the intervention of police officers and evacuation by ambulance. It is deponed that her safety cannot be guaranteed if she is released into the same environment. The State further alleges that the accused is likely to interfere with three prosecution witnesses who are her neighbours, that she lacks a fixed abode, that she poses a flight risk, and that there is a likelihood she will fail to attend court if

released. The State therefore maintains that compelling reasons exist to justify denial of bail.

3. In response, the accused filed a replying affidavit dated 2<sup>nd</sup> December 2025 in which she asserts that bail is a constitutional right and that the seriousness of the charge alone cannot justify denial of that right. She denies being a flight risk and states that no evidence has been presented to demonstrate that she intends to abscond or interfere with witnesses. She reiterates that she is presumed innocent and urges the Court to impose reasonable bail terms.
4. I have carefully considered the application, the rival affidavits, and the pre-bail report on record. The issue for determination is whether the State has demonstrated compelling reasons to justify limitation of the accused's constitutional right to bail.
5. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
6. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

**“In such a determination the courts are to factor the following exceptions to limit the right to bail;**

**(a) Nature or seriousness of the offence;**

**(b) The character, antecedents, associations, and community of the accused person;**

**(c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;**

**(d) The strength of the evidence of his having committed the offence:**

**(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;**

**(a) Has previously been granted bail and has failed to surrender to custody if released on bail, it is likely that he would fail to surrender to custody;**

**(b) Should be kept in custody for his own good.**

7. The constitution of Kenya specifically requires under Article 49(h) that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons why the accused should not be released on bail.

8. The starting point is therefore that the right to bail is constitutionally protected and that the burden rests upon the State to demonstrate compelling reasons for its limitation. The Court must evaluate the State's allegations not in the abstract but against the evidence presented.

9. With regard to the allegation that the accused lacks a fixed abode, the pre-bail report contradicts this assertion. The report

identifies her residence and indeed places that residence at the locus where the offence allegedly occurred. In those circumstances, the Court is unable to attach significant weight to the allegation that she has no known residence. The claim appears unsupported by the material placed before the Court and does not constitute a compelling reason.

10. Similarly, the allegation that the accused is a flight risk has not been substantiated by concrete facts. There is no evidence of prior absconding, no evidence of attempts to evade arrest, and no indication of cross-border connections or mobility that would heighten such risk. Mere assertion by the State, without supporting particulars, cannot suffice to displace a constitutional entitlement.
11. However, the Court must treat with greater seriousness the State's contention that the accused's release would endanger her own safety and pose a risk of interference with prosecution witnesses.
12. The pre-bail report confirms that the accused was rescued from an angry mob immediately after the incident. That fact is not disputed and demonstrates that the offence generated intense and immediate hostility within the community. The report further records that the deceased's family and members of the local community remain strongly opposed to her release and that tensions remain high. This is not a speculative concern but one grounded in an actual prior attempt at mob justice. The Court must therefore consider whether releasing the accused back into that same environment would expose her to a real risk of harm.
13. More significantly, the State asserts that the accused is likely to interfere with three prosecution witnesses who are her

neighbours. The Court notes that this allegation is not merely theoretical. Where witnesses reside in the same locality as the accused, and particularly where the alleged offence arises out of a domestic or relational context, the possibility of interaction is not remote but immediate. Interference with witnesses does not require proof of express threats. It may arise through subtle pressure, persuasion, intimidation, social influence, or mere proximity capable of undermining the independence of testimony. The Court must therefore assess whether the factual setting creates a reasonable likelihood of such interference occurring.

14. In the present case, the material before the Court shows that the key witnesses are neighbours of the accused and live within the same community in which emotions surrounding the offence remain heightened. The Court is satisfied that this proximity creates a realistic opportunity for contact between the accused and the witnesses if she is released. The risk is further compounded by the charged emotional context of the alleged offence and the ongoing hostility reported in the locality. In those circumstances, the Court finds that the apprehension of witness interference is not conjectural but grounded in the surrounding circumstances. The integrity of the trial process requires that witnesses be able to testify free from influence, fear, or community pressure.

15. In balancing the constitutional right to liberty against the need to safeguard the administration of justice, the Court is persuaded that the combined effect of the security risk to the accused and the realistic possibility of interference with key witnesses constitutes compelling reasons within the meaning of Article 49(1) (h) of the Constitution. These concerns, at this stage of the

