



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL CASE NO. E037 OF 2025**

REPUBLIC.....PROSECUTION  
**VERSUS**

CAESAR JUMA WANYAMA.....ACCUSED  
**RULING**

1. The accused is charged with 2 Counts of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The state has opposed the application for bond and filed an Affidavit sworn on 7<sup>th</sup> October, 2025 by **CPL Harrison Mayaka** in support thereof.
2. The reasons advanced for seeking denial of bail are that the accused was an employee of the deceased persons, **Pius Machogu Nyantika** and **Jerusha Kwamboka Machogu**, an elderly couple. It is argued that the Accused has no fixed place of abode and is therefore a flight risk. Further the Prosecution submitted that it cannot assure the Court that if the accused is released on bail/bond will attend Court.
3. It is further argued that following the incident the accused was subjected to "*mob justice*" sustaining injuries as a result and that his life may be endangered if released back to the community as are agitated and may not welcome him back.

4. It is emphasized that bail/bond is not absolute but a matter of Court's discretion. In view of the severity of the sentence and the above circumstances the temptation to abscond or go into hiding is real
5. The Prosecution argued that the Accused place of abode is unknown as he was living with the deceased. If admitted to bail bond the Prosecution might not be able to trace him bearing in mind he hails from a border town.
6. The Defence on the other hand argued that the Prosecution has failed to discharge burden of proof as right to bail is the cornerstone of justice. That the accused is presumed innocent.
7. That contrary to what the Prosecution contends, the Accused has a place of abode and comes from Busia and local administration knows him. That there is no evidence of the accused being a flight risk tendered.
8. Finally, that act of mob justice was an illegality as the state has a duty to protect everyone. That if the Accused is admitted to bail, he will be safe and protected by the state. The Defence contended that if the Court is inclined to deny bail/bond, it should grant favourable terms
9. On record there is a pre-bail report dated **17<sup>th</sup> November, 2025** which assessed the Accused as a flight risk due to the magnitude of the offence and hailing from a border town. There were inconsistencies noted. The Accused had indicated that he hails from Kakamega County Navakholo Sub-County but after contacting his parents, they indicated that he hails from Busia County, Nambale Sub-County.
10. That the parents also indicate that the Accused ran away from home ten years ago to an unknown destination and only found out that the accused was in remand upon being contacted by the probation

officer. The local administration stated that although he knew the parents of the Accused, he could not vouch for the accused having moved from the area long ago.

11. That the accused family is unable to meet the bond terms for the accused being landless and lacking property. the victims' family were against the release of the Accused on bail/bond terms. They believe inhuman actions were carried out by the accused against the victims including torture and rape while trying to retrieve important information to access their financial accounts.

### **Analysis and determination**

12. I have considered submissions by both parties for and against bail/bond, the pre-bail report as well as the affidavit.
13. Kenya's Constitution guarantees the right to bail under **Article 49(1)(h)**, which provides that 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 not to be released."*
14. This Constitutional right is further reinforced by the **Criminal Procedure Code** under **Section 123A** which provides statutory guidance. It provides that;

***(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding Section 123 in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—***

***(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 fulfillment 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.***

15. Kenya's **Bail and Bond Policy Guidelines** direct Courts to determine whether compelling reasons exist to deny bail while applying the following considerations:

- i. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty**
- ii. Character and antecedents of the accused person**
- iii. The strength of the prosecution case**
- iv. The failure of the accused person to observe bail or bond terms**
- v. Likelihood of interfering with witnesses**
- vi. The need to protect the victim or victims of the crime**
- vii. The relationship between the accused person and potential witnesses**
- viii. Child offenders**
- ix. The accused person is a flight risk**

**x. Whether the accused person is gainfully employed**

**xi. Public order, peace or security; and**

**xii. Protection of the accused person**

16. In this case, the Prosecution and the pre-bail report assessed the Accused as a flight risk citing the magnitude of the offence, lack of a place of abode and his ties to a border town. The seriousness of the charges carries a potential death sentence under **Section 204** of the **Penal Code**.
17. Courts have consistently held that that the gravity of the offence and severity of the sentence may increase the likelihood of absconding, however, the mere fact that an Accused face a murder charges is not by itself sufficient reason to deny bail. The Court must assess the risks such as flight, absconding, interference with witnesses or public order concerns.
18. The Accused gave conflicting information regarding his place of abode with the local administration not being able vouch for him. This uncertainty of residence coupled with his ties to a border town carries the risk of flight and undermines the Court's ability to ensure his attendance at trial. In ***Mwangi v Republic [2024] KEHC 9453 (KLR)*** bail was denied where the accused's residence was uncertain, underscoring the importance of traceability.
19. There are also safety concerns for the Accused. The Defence insists that the accused is safe as his safety is guaranteed by the state. The Court cannot overlook the fact the Accused was subjected to mob justice. The Court cannot gamble with mob mentality, as community hostility presents a real and tangible danger to the accused if

released. While the rights of the victim must be protected, the rights of the accused are equally safeguarded under the Constitution. If there is a slight risk of violation of the Accused person's rights under the Constitution, the Court cannot overlook that risk.

20. The family of the victims also gave their views. While victims' views are not determinative, they are relevant under the Bail and Bond Policy Guidelines. Their opposition reflects genuine concerns.
21. The defence has sought lenient bail conditions proposing that the accused would avail contacts and surety to ensure attendance. The Court notes that the Accused's family is unable to meet bond terms which further complicates the imposition of reasonable bail conditions that would secure his attendance in trial. Without viable sureties the Court cannot be assured of compliance.
22. Having considered the totality of the circumstances, the Court finds that the Prosecution has tendered compelling reasons to warrant denial of bail.
23. The Accused is therefore denied bail and will remain in custody until this case is heard.

It is so ordered.

**Dated signed and delivered this 23<sup>rd</sup> day of February, 2026**

**Mohochi S.M.**

**JUDGE**