Republic v Rotich (Criminal Case E022 of 2024)
[2026] KEHC 2682 (KLR) (4 March 2026) (Ruling)

Neutral citation: [2026] KEHC 2682 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL CASE E022 OF 2024

RN NYAKUNDI, J

MARCH 4, 2026

BETWEEN

REPUBLIC ..... PROSECUTION

AND

ROSE CHEPKEMBOI ROTICH ..... ACCUSED

RULING

1. The accused person had initially made an application for bail/bond before this court which was declined vide a ruling dated 17th February, 2025. The accused persons were initially three but A2 & A3 opted to enter into a plea bargain, which was welcomed by the state with the concurrence of the victims. The 1st accused person is therefore the only one in this matter and she has since made an application through counsel of have a bail/bond terms reviewed. The application dated 23.07.2025 seeks for a relief that:

    a. That this honorable court be pleased to grand and/or admit Rose Chepkemboi Rotich, the 1st accused/applicant to bond/bail on such terms as may be reasonable and fair pending hearing and determination of the trial herein.

2. The grounds in support of the application are that the offence is bailable under *the Constitution* of Kenya and the applicant has a constitutional right to bail pending hearing on reasonable conditions and terms pending trial and determination of the case. She further argued that she has a known residence in Elgon view estate Eldoret Town, being her matrimonial home and Kabarnet where she works. That she is not a flight risk and she is an employee of the Ministry of Health currently working as an anesthetist within Kabarnet County Referral Hospital.

3. It is the applicants case that there is no compelling reasons why she should not admitted to bail to enjoy her liberty as she awaits her trial. That there is absolutely no evidence presented that the she is likely to interfere with the witnesses if she is released on bond or bail.

4. The victims through their counsel filed grounds of opposition dated 4th February, 2026, which can be highlighted as follows:

    a. The applicant has not applied for review of right to bail but has filed a similar application as the original application.

    b. The applicant is not to repeat the same grounds as in the original application which were rejected as the rejected grounds can only be the subject of an appeal to the Court of Appeal.

    c. The application dated 23.07.2025 makes no reference of the previous bail application and the reasons for his refusal.

    d. That there are changed circumstances which do not favor the accused as her co-accused persons opted for plea bargain thus directly implicating her in the commission of the offence and are due to testify in this case.

    e. Being in a desperate situation currently, the motivation to flee or to go underground is not far-fetched and is the predominant factor which the court ought to consider when determining the bail/bond application.

    f. The security concerns for the victims raised earlier still subsist.

    g. The safety of the accused is not guaranteed either as no new pre-bail report has been prepared.

    h. The medical condition of the accused is presumed to be okay in the absence of a medical report in the contrary.

5. PC John Kulecho equally swore an affidavit urging this court not to grant the accused person bail/bond for the following reasons:

    a. The manner in which the murder was committed was truly gruesome and horrific especially the key remaining witnesses.

    b. One of the remaining witness is a sister to the accused and knows the exact place and location where the witness resides.

    c. The witness is yet to testify in the matter and had opted to testify virtually during the last hearing date before the matter was adjourned.

    d. The other two witnesses were co-accused to the suspect and if released before testifying against her may interfere with their testimony.

    e. The deceased was a well-known and a beloved member of the society and the news of his gruesome murder at the hand of his wife and assassins has caused uproar in the community.

    f. In the event that the accused is released on bail/bond there is a high likelihood that she will be put in harm by members of the society.

6. The accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 1st day of August, 2023 at Kabatu area, in Moiben Sub-County within Uasin Gishu he murdered one Ruth Mutai. The accused was presented before this court and a plea of not guilty was entered.

7. The accused person through her counsel filed written submissions dated 21st October, 2025 in this respect and largely submitted that there have been no compelling reasons advanced to deny the accused person her right to bail. Learned Counsel Mr. Momanyi submitted that the applicant prays for the

review of her application for admission to bail in view of the changed circumstances. That she will be able to attend court as and when required and she is amenable to the imposition of such conditions as the honorable court deems appropriate.

8. The victims on the other hand through counsel filed written submissions dated 4th February, 2026. Learned Counsel Mr. Otieno essentially submitted that the instant request does not seem to be a review application but appears to suggest that the application is made afresh. Counsel urged the court not to consider the request since it was handled before by this court and therefore, without an appeal to the said decision, the court cannot consider this fresh application.

Determination.

9. It is important at the outset to situate this application within its proper procedural context before venturing into its substantive merits, if any. The accused person appeared before this court previously and made an application for bail or bond. That application was heard on its full merits and declined by way of a reasoned ruling delivered on 17th February, 2025. It has not been challenged by way of appeal to the Court of Appeal, and there is no indication before this court that any such appeal was ever filed. The significance of that fact cannot be understated. A ruling of this court, once delivered, remains in place unless it is set aside by a court of competent appellate jurisdiction or validly reviewed on proper grounds by the very court that made it.

10. The present application, framed as a review, does not by its substance truly present itself as one. The application dated 23rd July, 2025 makes no reference whatsoever to the earlier ruling of 17th February, 2025. It does not acknowledge that a prior determination was made, let alone identify the grounds upon which that determination should be interfered with. As correctly submitted by learned counsel Mr. Otieno for the victims, what has been placed before this court is in substance a fresh application seeking bail on the same grounds as those previously ventilated and rejected. This court cannot sit on appeal over its own ruling, nor can it entertain an application that is in truth nothing more than a repetition of a matter that has already been conclusively resolved at this level. The proper remedy available to the applicant, if aggrieved by the earlier ruling, is an appeal to the Court of Appeal.

11. The court is, however, alive to the fact that the law does recognize a review jurisdiction and that in appropriate circumstances, even in criminal proceedings, a court may be invited to reconsider a bail determination on the basis of materially changed circumstances or fresh evidence of sufficient weight. It is on that footing that this court has nonetheless considered whether, even if the application were to be treated charitably as one for review, it would pass muster. In doing so, the court borrows pari materia from the principles governing review in civil proceedings, finding those principles to be instructive and applicable by analogy to the present criminal context. While bail applications in criminal matters are governed by *the Constitution* and the Criminal Procedure Code, the foundational question of what must be shown to justify reopening a prior judicial determination is one of general jurisprudential principle, and the civil law framework articulates that principle with clarity.

12. Order 45 Rule 1 of the Civil Procedure Rules provides:

> " Any person considering himself aggrieved;
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> a. By a decree or order from which an Appeal is allowed, but from which no appeal has been preferred; or
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> b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which after the exercise of the diligence, was not within his knowledge or could not be produced by

him at the time when the decree was passed or the order made, or an account of some mistake or error...on the face of the record, or for any other sufficient reasons, deserves to obtain a review of the decree or order, may apply for a review of the judgment to the court which passed the decree or made the order without unreasonable delay."

13. Section 80 of the *Civil Procedure Act* is basically in all fours with orders 45, rules 1 and 2 and provides:

> " Any person who considers himself aggrieved –
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> a. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or
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> b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order and the court may make such order thresh as it thinks fit."
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> c. The principles governing what amounts to "new and compelling evidence" are now well settled. In Tom Martins Kibisu v Republic [2014] eKLR, the Court of Appeal held that:
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> > " New" evidence is evidence that was not available at the time of trial and could not, with reasonable diligence, have been obtained; and
> >
> > "Compelling" evidence is evidence that is credible, of high probative value, and which, if adduced at trial, would probably have led to a different verdict."

14. Borrowing from those principles as set out in the provisions cited above, it is plain that a review can only be sustained where the applicant demonstrates the discovery of new, important and compelling matter or evidence which, after the exercise of due diligence, was not within her knowledge or could not have been produced at the time the earlier determination was made, or where there exists some mistake or error apparent on the face of the record, or other sufficient reason that commands the intervention of the court.

15. Measured against that standard, the application before this court falls decisively short. The applicant has not placed before this court any fresh evidence or material that was not available at the time of the first bail application. The grounds now advanced, namely that she has a known residence, that she is a government employee, that she is not a flight risk, and that she is willing to abide by conditions imposed by the court, are in substance identical to what was urged before and rejected. No new pre-bail report has been placed on the record. No medical evidence has been tendered to justify special consideration on health grounds. The applicant has not demonstrated that any circumstance bearing on her admission to bail has fundamentally altered since February 2025. To the contrary, the intervening developments in the proceedings have, if anything, strengthened the case against granting bail. The co-accused persons, A2 and A3, have since entered into plea bargain agreements with the state and are set to testify against the applicant in the main trial. As correctly submitted in opposition, the fact that two key witnesses who were formerly co-accused are now directly implicating the applicant and are due to testify materially heightens, rather than diminishes, the concern that the applicant may be motivated to interfere with the course of justice. These are not changed circumstances that favour review; they are changed circumstances that reinforce the court's earlier determination.

16. The court has not lost sight of the constitutional imperative under Article 49(1)(h) of *the Constitution*, which entitles every accused person to be released on bail or bond on reasonable conditions unless there are compelling reasons justifying continued detention. That right is not absolute, and this court affirmed its recognition of those principles in the earlier ruling. The question here is not whether bail can ever be granted but whether the applicant has laid a proper foundation for this court to revisit its earlier decision. She has not. The application is, in form, procedurally defective for failing to engage with or impugn the earlier ruling and in substance, even if the court were to treat it generously as a review application, it discloses no new and compelling evidence capable of moving this court to a different conclusion.

17. The object of revisional jurisdiction Under Section 362 Criminal Procedure Code as nuanced with Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules : The object of the provisions of revision and or review is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional Jurisdiction an be invoked where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

18. Revisional Jurisdiction as intimated to by the Applicant is to be exercised on question of law basically so that justice is done or is seen to be done. In the instant case, the far cry from the State and the victims of the offence who apparently include the accused's own children is that if she is released she will be a threat to interfere with witnesses which broadly I interpret to be any conduct direct or indirect that creates a reasonable fear of harm or intimidation or attempt to influence testimony which in turn undermines the administration of justice. Is there a risk to the administration of justice in so far as this case is concerned? In my view the answer is in the affirmative and even more serious risk given the mutative character of the case where two of the conspirators have entered into a Plea-Bargaining Agreement to be part of the witnesses against the Applicants. There is also well-grounded fear of interference given the nature of the allegations facing the Applicant that she facilitated in the murder of her own spouse. There are still a number of witnesses out there who are expected to give evidence in support of the prosecution case and therefore the reasonable possibility for the Applicant to put pressure on the remaining witnesses is not in realm of remoteness.

19. What do I see as the elements of interference by the Applicant in the event discretion is exercised to release her at this stage when the second phase of the trial would be receiving highly sensitive information on the chronology of events within the knowledge of the co-accused whose indictment has been withdrawn and have already pleaded to various offences with a residual clause that there would be part of the prosecution team of witnesses as against the Applicant. These are the characteristics of interference which is likely to impair the fair administration of justice in this case.

    a. Direct Communication: Threats, promises of reward, or pleading with witnesses to change their testimony.

    b. Indirect Action: Using third parties (family friends, legal representatives) to send message, coerce, or threaten

    c. Digital/Forensic Interference: Deleting message calls, or record (WhatsApp phone logs) related to the incident.

    d. Creating a "Well-Grounded Fear" Even if no explicit verbal threat is made behavior that causes the witnesses to fear for their safety or that of their family is sufficient.

20. The issues in this application have not met the threshold on the basis of the right to bail which is not absolute as promulgated under Article 49 1(H) of *the constitution* that compelling evidence of interfering of witnesses by the Applicant overs as a black cloud over her head for the offence she is facing is one of the most serious offences in our penal system by its very nature it touches on the right to life.

21. In the premises, the application dated 23rd July, 2025 is hereby dismissed. The accused person shall remain in lawful custody pending the hearing and determination of the main trial.

22. A pre-trial conference shall be held on 15.04.2026 to chart the way forward on certainty of trial dates. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF MARCH 2026.

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R. NYAKUNDI

JUDGE