



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY  
COURT NAME: MOMBASA HIGH COURT  
CASE NUMBER: HCCRC/E003/2026  
REPUBLIC VS JULIUS MAGETA

RULING

**Background**

1. The accused person 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. The particulars of the offence are that on 22nd November 2025, at Chembani area in Bamburi, Kisauni Sub-County within Mombasa County, he murdered STEPHEN OTIENO OPELO.

when he was arraigned in court, the state opposed his release on bond and the court called for a pre bail report. Thereafter accused person's Advocate and learned counsel Mr. Sirima filed their respective submissions which the court has duly considered.

**The law**

3. The right to be admitted to bail is expressly provided for under Article 49(1)(h) of the Constitution and is anchored on the principle of the presumption of innocence until proven guilty. The same position was reiterated in **Njeru v Republic [2025] KEHC 16427 (KLR)** where the court cited the decision in **Republic v Irungu alias Jowie & Another [2024] KEHC 2533 (KLR)** and held: "An accused person cannot be kept in detention pending trial as a form of anticipatory punishment. The presumption of innocence as stipulated in Article 50(2)(a) of the Constitution is that he is innocent until his guilt has been established by the court beyond reasonable doubt, and not on the strength of the evidence so far tendered. This is the purpose for which Article 49(1)(h) of the Constitution and Section 123 of the Criminal Procedure Code form part of our legal system."

4. Further, in **Republic v Ojode [2025] KEHC 18904 (KLR)** the court held:

"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.”

In the above case the court also stated:

“The onus to prove the existence of such compelling reasons lies with the State (**see Republic v Kennedy Ochieng Kisakwa [2013]** eKLR) and the standard of proof that the reasons presented meet the compelling reasons test is on a balance of probabilities (see *Walford Ngugi & 2 others v Republic [2017]* eKLR and *Republic v Ahmed Mohammed Omar & 6 others [2010]* eKLR).”

The court further observed that the right to bail is not absolute as held in:

**Republic v Fredrick Ole Leliman & 4 Others [2016]** eKLR where it was stated that the availability of bail and/or bond under Article 49 of the Constitution is not an absolute right. In other words, the right to liberty is among those rights that may be limited under Article 24 of the Constitution through denial of bail where compelling reasons are demonstrated.

### Analysis

5. A bail report dated 5th March 2026 was filed in court in which the probation officer, Mr. Stephen Muthoka, interviewed the families of the victim and the accused as well as the accused person himself. The report indicates that the accused has a place of abode at Bamburi where he operated as a tout at Utange Street near Munas, next to the Buscar office in Bamburi.

The victim’s family is vehemently opposed to the release of the accused on bail as they are neighbours and they reasonably apprehend that there may be interference with witnesses.

The report also indicates that the accused person has no close relatives who can act as sureties on his behalf and they do not possess legal documents that may be used as bond security. His siblings are all unemployed save for one who operates as a boda boda rider.

Mr. Muthoka further noted that members of the community are irate and baying for the accused’s blood, which implies that even if the court were to grant bail or bond, his life may be at risk.

6. The State, through an affidavit sworn by PC Amin Kahiya on 2nd March 2026, also opposed the release of the accused on bail or bond terms. PC Kahiya deponed that he is one of the investigating officers and that the accused assaulted the victim together with other persons who have not yet been traced.

He further explained that the star witness in this matter is the victim’s wife and that she is a neighbour of the accused. He advanced the following compelling reasons in opposition to bail:

- i. The accused and the victim’s wife are well known to each other and there exists a strong probability that the accused may threaten or dissuade the witness from testifying in court.
- ii. There is evident hostility and anger among members of the community against the accused and there is a high likelihood of reprisal attacks against him if he is released.

7. The Bail and Bond Policy Guidelines of 2023 provide guiding principles which courts apply when considering applications for bail or bond. It is clear that although the accused has the right to be presumed innocent until proven guilty, paragraph 3.1(e) requires that a balance be maintained between the rights of the accused and the interests of justice.

In the present case, the compelling reasons advanced tilt the scales in favour of the denying bond for the time being. Releasing the accused at this stage may defeat the purpose of bail or bond, particularly where the court is not assured of the safety of the accused even before the next mention date.

Further, paragraph 4.9(e) of the guidelines provides that bail may be denied where there is strong and un rebutted evidence that the accused may interfere with witnesses and where the court cannot impose conditions sufficient to prevent such interference. These two reasons are compelling reasons to warrant limiting the right to bail or bond.

8. In the circumstances, the request for bail or bond is hereby declined. However, the court reserves



the right to review the bail or bond status once the victim's wife has testified in court. At that stage, the risk of interference with the witness will have been mitigated and the court may reconsider the accused's right to liberty. A further bail review will also be required at that time to determine the situation on the ground.

**conclusion**

9. For now the application fails but to keep the playing field even handed, the taking of the evidence especially that of the victims's widow will be fast tracked. a close hearing date is to be fixed.

10. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT / ONLINE THROUGH MS TEAMS THIS ...5th..... DAY OF ...March.....2026.**

**HON. LADY JUSTICE W. K. MICHENI**

**JUDGE**

**In the presence of:**

**MR. Otieno for the applicant**

**Mr. Sirima For the State**

**Bebora – Court Assistant**

SIGNED BY/FOR:

HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.

MOMBASA HIGH COURT

HIGH COURT CRIMINAL

DATE: 2026-03-10 01:59:34

