



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gitahi (Criminal Case E006 of 2021)
[2026] KEHC 3766 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E006 OF 2021
CW GITHUA, J
MARCH 19, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER MACHARIA GITAHU ACCUSED

RULING

1. The accused, Peter Macharia Gitahi, was charged with the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars alleged that on 1st March 2021 at Kianguku village in Rwathia Location, Kangema Sub-county within Murang'a County, the accused murdered Millan Wambui.
2. Upon being arraigned in court, the accused denied the charges. The record shows that on the date he took his plea, his learned Counsel, Mr. Mbue Ndegwa, made an oral application seeking that he be admitted to bond or bail pending his trial. The court ordered filing of a pre-bail report. On 21st July 2021, Mr. Ndegwa abandoned his bond application after realizing that the pre-bail report was not favourable to the accused.
3. The record further reveals that hearing in the case started on 3rd June 2024 and two witnesses testified. The witnesses were recalled on 26th November 2025 and after they concluded their evidence, Mr. Ndegwa made a fresh application for accused's admission to bond pending conclusion of the trial. In his submissions, Counsel urged the court to note that the accused had been in custody for over 4 years and the fears regarding his security if released expressed in the initial pre-bail report must have dissipated with the passage of time; that since the two critical prosecution witnesses had testified, there was no good reason to continue the accused's detention in custody.
4. The application was contested by the State. The investigating officer CPC Harold Tsuma swore an affidavit on 26th February 2026. He opposed the application on grounds that the accused was a fight



risk since he lived in a temporary mabati shelter and did not have a permanent place of residence at his rural home and that at the time of his arrest, he was working as a tout in Mwiki area of Nairobi; that if he was released, he was likely to abscond.

5. Learned prosecution counsel Mr. Mwangi opposed the application relying on the affidavit sworn by the investigating officer and the pre-bail report filed on 19th January 2026. The pre- bail report was filed pursuant to an order made by this court on 26th November 2025. Mr. Mwangi urged the court to note that the findings in the pre-bail report showed that the hostility towards the accused from members of his community had not eased and that if released, his safety could not be guaranteed.
6. In his rejoinder, Mr. Ndegwa submitted that no compelling reason had been advanced by the prosecution to justify denial of bond to the accused; that his continued incarceration violated his constitutional right guaranteed under Article 49 (i)(h) of *the Constitution*. Counsel submitted that no evidence had been adduced to prove that the accused was a flight risk.
7. Regarding the claim that accused’s safety would be compromised if released due to hostility on the ground, Mr. Ndegwa submitted that the pre-bail report was not objective since it constituted views expressed by witnesses who were biased against the accused; that in any event, for the five years the accused had been in custody, there has been no reported incident of a breach of the peace against the accused’s family who still live in the same village. He urged the court to admit the accused to bond on terms it deemed appropriate.
8. I have carefully considered the application, the affidavit sworn in opposition thereto as well as the oral submissions made by counsel on record in support and in opposition thereto. I have also read and considered the content of the pre-bail report.
9. It is trite that under Article 49 (i) (h) of *the Constitution*, an arrested or accused person has a right to be released on bond or bail pending a charge or trial subject to existence of compelling reasons.
10. There is no scientific method of determining what constitutes compelling reasons envisaged under Article 49(i)(h) of *the Constitution*. Each case must be decided on its own facts and circumstances.

The Court of Appeal in *Michael Juma Oyamo & another V Republic* (2019) eKLR after citing with approval the High Court decision in *Republic V Joktan Mayende and 3 Others Criminal Case No. 55 of 2009* gave guidance on this subject when it defined the phrase “compelling reasons” as follows:

“The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”

11. Section 123A (2) of the Criminal Procedure Code (CPC) as read with The Judiciary Bail and Bond Policy Guidelines 2015 paragraph 4.26 enumerates factors which a court should bear in mind when exercising its discretion in deciding whether or not to allow an application for bond or bail. These factors include the following;
 - i. Whether the accused is likely to fail to attend court proceedings;
 - ii. Whether he was likely to commit or abet commission of a serious offence;
 - iii. Whether he was likely to endanger the safety of victims, individuals and the public;
 - iv. Whether he was likely to interfere with witnesses or evidence;



- v. Whether he was likely to endanger national security or whether it was in the public interest or accused's own safety to detain him in custody.
12. . In this case, the prosecution has opposed the accused's application on grounds that he was a flight risk and that if released, he was likely to abscond. However, the prosecution failed to adduce any evidence to substantiate this claim. The fact that the accused was working in the informal sector as a tout before his arrest and the fact that he was living in a temporary shelter is not evidence upon which this court can make a finding that he was a flight risk.
13. Another reason advanced by the prosecution in opposition to the application is that if released, the accused's safety and security will be in jeopardy given the hostility still existing towards him from members of the community he hails from.
- This claim finds support in the pre-bail report filed on 26th November 2025. At the outset, I wish to disagree with the sentiments expressed by learned counsel for the accused that the pre- bail report was not objective since in his view, it constituted views of prosecution witnesses who were biased against the accused.
- I have no reason to doubt the objectivity of the report considering that it was a product of social inquiries conducted by an independent public officer who had no interest in the outcome of the case. Besides, it contained views of not only the victim's family but also views of other members of the community including the local administration and members of the accused's family.
14. That said, it is evident from the report that there is still palpable anger and hostility towards the accused from members of his community who considers him a threat not only to his village mates but also to himself if he was admitted to bond or bail. The report further shows that members of his family were also opposed to his admission to bond for fear of stigmatization and possible retaliation by members of their community.
15. . In view of the foregoing and considering that the accused has not told the court that he has an alternative place of abode, I find that if released, the accused will in all probability go back to his rural home where he was likely to receive a hostile reception. Given the resentment still prevailing towards him from members of his community, I am satisfied that the prosecutions apprehension that if released, his life or safety would be in jeopardy is justified and well founded.
16. . Life is sacrosanct and this court has a duty to protect and safeguard the life of all persons including that of the accused person. It would be remiss of me to release the accused on bond in circumstances that would put his life and safety at risk. In the premises, it is my finding that the prosecution has established a compelling reason to justify denial of exercise of the accused's right to bond or bail at this point in time. I find that his continued detention in custody is necessary for his own protection considering that he has not demonstrated that he has an alternative place of abode.
17. . For the foregoing reasons, I decline to allow the accused's application but he is at liberty to revisit it in the event that he secures an alternative place of abode away from the locus in quo.
18. . Considering the age of this case and the period the accused has been in custody, it is only fair that his trial be expedited. I therefore order that all hearing dates in this case going forward should be fixed on a priority basis.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 19TH DAY OF
MARCH, 2026.**



HON. C. W. GITHUA

JUDGE

In the presence of:

The Accused

Mr. Mbue Ndegwa for the accused

Mr. Mwangi for the respondent

Ms. Susan Waiganjo, Court Assistant

