

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL CASE NUMBER E013 OF 2026

REPUBLIC

PROSECUTION

VERSUS

JUSTUS KIMATHI NTOITHA alias MAKABURI

ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. After plea was taken, the prosecuting counsel informed the court that the State was opposed to the grant of bond to the accused. She relied on the affidavit sworn by P.C. Geoffrey Kamau, the Investigating Officer on 26/2/2026.
3. In the said affidavit, the said officer deponed that the accused had threatened one Issac Kobia, who is a Nyumba Kumi official on allegations that he had collaborated with police officers in arresting him. He referred to a report booked vide OB NO. 08/02/2026 at Kabachi police post.

4. It was further deponed that while in the police cells, the accused assaulted a fellow prisoner, namely Patrick Ntongai Mutwiri and incited other prisoners not to eat food provided for them. The said report was booked as O/B NO. 7 OF 8/2/2026.
5. The officer further depones that after the alleged incident, the accused went into hiding. That due to the nature of the offence, the accused is likely to interfere with witnesses. That the accused is a well-armed person hence dangerous to the local community. That the accused's own life is in danger from the local community. That the accused is not a first-time offender having served prison term for a similar offence. That due to the accused's actions, police officers at Kabachi police post are in fear of retaliation attacks from the accused and his accomplices.
6. In response, advocate for the accused argued that no compelling reasons have been adduced to warrant on denial of the right to bail/bond. That the allegations of violence are unproven.

7. That no potential witness has been identified as being likely to be interfered with. That the accused was already in custody when the alleged threats were made.
8. It was further submitted that the allegation of incitement of fellow prisoners is not a good ground to deny accused bond. That the alleged assault was by one Julius Kimathi and not the accused. That there is no evidence that the accused is armed and no charges on that allegation have been preferred against the accused. Advocate for the accused urged the court to dismiss the application and grant the accused bond.
9. The rights of an accused person are entrenched in our constitution. Article 49(i)(h) thereof provides as follows:
Rights of arrested persons.

49. (1) An arrested person has the right—

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

10. It is thus clear that the right to bond/bail is not absolute and many may be denied, if there are compelling reasons.
11. As to what amount to a compelling reason, the same will depend from case. Section 123A (2) of the Criminal Procedure Code details some of the grounds as follows:

“(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) the nature or seriousness of the offences;

(b) the character, antecedents, associations and community ties of the accused persons;

(c) the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and

(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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.”

12. In the case of **Republic - V- Danson Mugunya [2010]** **eKLR** the court cited some of the grounds to be considered in whether to grant bond or bail to an accused. These include:

- a) The nature of charge or offence and the punishment to be meted out if accused is convicted.
- b) The strength of the prosecution case.
- c) Character and antecedents of the accused.

- d) The need to protect the victim or victims of the crime.
- e) Likelihood of interfering with witnesses.
- f) The relationship between the accused and potential witnesses.
- g) Whether the accused is a flight risk or not.
- h) Protections of the accused person.

13. This list is not exhaustive and each case has to be looked at on its own set of circumstances. It is for the State to provide these compelling reasons and not for the accused to disprove them.
14. In **Republic -V- Robert Zippor Nzilu [2018] eKLR** the court held that compelling reasons are dependent on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. As regards the severity of an offence, the court held in this case that the mere fact that the offence with which an accused is charged carries a severe sentence is not necessarily a reason for denial of bail. The court reiterated that the burden of proof

lies on the prosecution to show that there are compelling reasons to deny an accused person bail/bond.

15. In Republic **-V- Danford Kabage Mwangi [2016] eKLR** the High Court held that the grounds of denial of a bail application must be proved by the prosecution to the satisfaction of the court. The court stressed that mere allegations or possibility is not enough. The court also held that bail cannot be denied simply because an accused has been charged with a serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the grounds for refusing bail exists.
16. I have considered the application the reasons adduced and the authorities cited.
17. The alleged offence was committed on 25/10/2025. The accused was presented in this court on 18/2/2026 after being detained vide Misc. Cr. Application Number E048 at Maua Court. It is not clear when the decision to charge the accused was made and if he was ever summoned to the police station or DCIO offices. As such it is difficult if the accused was on the run as alleged.

18. Although it is alleged that the accused was convicted on a similar offence, no details are given about the case in question.
19. The alleged fear by police officers at Kabachi Police Post has not been fully explained, nor is the nature of arms alleged held by accused. If the latter is true, nothing prevents the State from prosecuting him over the same.
20. Having considered the matter, I am of the view that the reasons fronted by the State are not compelling. Denial of a right to bond/bail should be based on something more than mere averments.
21. I therefore decline the request to deny the accused bond.
22. Accused is granted a bond of Kshs.300,000/= with a surety of similar amount.
23. He is warned that should be found to have committed any act in contravention of the bond terms then he will have to conduct his case while in custody.

Dated, Signed & Delivered at Meru this 23rd day of April, 2026.

**H. M. NYAGA
JUDGE**