



REPUBLIC OF KENYA



**Republic v Moga alias Rasta & 3 others (Criminal Case E057 of 2024)  
[2025] KEHC 661 (KLR) (Crim) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E057 OF 2024  
AM MUTETI, J  
JANUARY 27, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KEVIN OTIENO MOGA ALIAS RASTA ..... 1<sup>ST</sup> ACCUSED**

**JACOB MUIA KITILI ..... 2<sup>ND</sup> ACCUSED**

**JOHN MUASYA MUTISYA ..... 3<sup>RD</sup> ACCUSED**

**FLORAH NDUKU KITILI ..... 4<sup>TH</sup> ACCUSED**

**RULING**

1. The accused persons are charged jointly with the offense of murder under section 203 as read with 204 of the Penal Code.
2. The particulars of the offense are that on 14<sup>th</sup> August 2024 at 2130 hours at Astrol Utawala area, Njiru Sub County within Nairobi County they jointly murdered Linus Collins Oduor.
3. The four accused persons are members of the same family.
4. The four accused persons have pleaded this court to be released on bail pending trial.
5. The application for bail is opposed by the state who through No. 92262 CPL Sabian Odongo have filed an affidavit in opposition.
6. The affidavit raises the issue of interference of witnesses as the main ground for consideration by this court has a compelling reason to deny bond.



7. The witnesses that the prosecution has expressed concern about includes PW1 who has already testified as being one of those who may be interfered with.
8. The other witnesses are the caretaker of the place they lived, the watchman and 2 other immediate neighbours.
9. When the application for bail was made on the 11<sup>th</sup> November 2024 this court ordered that the evidence of the minor PW1 be taken before the ruling on bail could be delivered.
10. This court made the order in recognition of the fact that PW1 being a minor before anything is done by the court, the child's best interest to be protected from abuse and Article 53 (2) of the constitution must be taken into account thus the suggestion by the prosecution that the child could possibly be exposed to the risk of interference was a primary concern to this court.
11. The protection of children from all forms of abuse should occupy the mind of the court always especially where the child has come into contact with the law Ada is a witness or in any other capacity. See CMCC (suing as the next friend of and on behalf of CWM) & 6 Others Vs. Standard Group & 4 Others (Petition 13 [E015] of 2022 [2023] KESC 68(KLR) (8 September 2023) Judgment Neutral Citation :[2023] KESC 68.
12. The child having already testified in the matter the threat of interference with her is now removed and the court can proceed and deal with the issue of bail focusing on the other witnesses who the prosecution said may be interfered with.
13. The right to bail is constitutionally guaranteed an Article (49) (1) (h) of Constitution.
14. The right though not absolute must not be curtailed whimsically by the courts. The court must be satisfied that there exist compelling reasons to warrant the denial of bail. See Republic Vs Danson Mugunya & Another [2010] eKLR.
15. The primary consideration for the court in determining applications for bail should be whether the accused person shall return to court for trial once released on bail.
16. The right to bail is so important that the prosecution must present cogent evidence to support the compelling reason that they advance in order for them to persuade the courts not to grant bail.
17. The prosecution has simply stated that they fear witnesses may be interfered with since in this case the witnesses are known to the accused persons.
18. The prosecution has not given any evidence of any attempts so far made by the accused persons to interfere with the witnesses either directly or through proxy.
19. It must be remembered that interference with witnesses can occur even when the accused persons are in custody.
20. The interference may take the form of corruptly influencing the witness through monetary offers or gifts to dissuading them from testifying.
21. Interference may also take the form of threats or intimidation or even mere persuasion of the witnesses. All these forms of interference can be executed by an accused while in custody either directly or through proxy.
22. The prosecution must therefore be able to present tangible evidence of interference and also demonstrate the measures taken by them to alleviate the danger of interference.



23. It is not enough for the prosecution to inform the court that they are apprehensive. Fear can never be a good ground to deny bail. See Republic Vs. Dwight Sagaray and 4 Others [2013] eKLR .
24. If the courts were to accept the proposition by the prosecution that where the witnesses are known to an accused person, that should be sufficient ground to deny bail, the courts would be traveling on a very dangerous and slippery road since in most murder cases and other forms of crime that are prosecuted in our courts daily, accused persons are often known to the witnesses and vice versa.
25. It would even be more dangerous where the offense is committed against a member of a family because potentially all witnesses would be known to the accused and therefore adopting the theory propounded would be very dangerous and would basically mean that in such cases no bail would be granted.
26. The accused persons in this case are presumed innocent until proven guilty. The right to liberty should thus not be curtailed without good cause as envisaged under Article 49 (1) (h) of *the Constitution*.
27. I have carefully looked at the affidavit by the prosecution and all I can smell from it is fear and nothing more. The prosecution should take comfort in the words of the Holy book in Isaiah 41:13:-
 

“ For I am the Lord your God who takes hold of your right hand and says to you do not fear  
I will help you”.
28. The state is not without tools to protect its witnesses even as it looks up to the Lord. The *Witness Protection Act* under Section 4 provided provides an elaborate scheme of measures available for protection of witnesses.
 

The measures include:-

  - a. Physical and armed protection.
  - b. Relocation within or outside Kenya.
  - c. Change of identity: or
  - d. Any other measure necessary to ensure the safety of protected person.
29. The state has those options available to it and any other of the measures specified under Section 4 (3) of the Witness protection measures. The state has not expressed any difficulty in deploying any of the pleasures available to them.
30. For the above stated reasons I hereby find that the opposition to the grant of bail is not merited accordingly I admit all the accused persons to bail in the following terms:-
  - a. Each accused person shall be released on a bond of Kshs. 1Million plus one surety of similar amount.
  - b. Each accused person may in the alternative deposit a cash bail of Kshs. 500,000.
  - c. The accused persons shall each provide contacts of one person who shall sign an undertaking to ensure that the accused person attends court as and when required.
  - d. Each of the guarantor Under(c) above to provide their mobile telephone numbers which they shall maintain in use throughout the trial.
31. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JANUARY 2025.**

**A. M. MUTETI**

**JUDGE**

**In the Presence of:-**

Kiptoo: Court Assistant

Ms Njoroge

Mr. Ngunjiri for 2<sup>nd</sup>, 3<sup>rd</sup> Accused

Mogoi for 3<sup>rd</sup> & 4<sup>th</sup> Accused

