



**Republic v Kahira & 4 others (Criminal Case 14 of 2019)  
[2025] KEHC 9338 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9338 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 14 OF 2019  
TW OUYA, J  
JUNE 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PAUL NDUNG'U KAHIRA ..... 1<sup>ST</sup> ACCUSED**

**JOSPHAT NG'ANG'A MURATHA ..... 2<sup>ND</sup> ACCUSED**

**MOSES EBONGON LOKADEL ..... 3<sup>RD</sup> ACCUSED**

**GEORGE MUSYIMI KALUKU ..... 4<sup>TH</sup> ACCUSED**

**MARANGA JOEL STEVES ..... 5<sup>TH</sup> ACCUSED**

**RULING**

1. The five (5) accused persons have made an application seeking to be granted favourable bail and bond terms. The accused herein were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. They pleaded not guilty and are in police custody awaiting trial.
2. The initial application was for bail pending trial Justice Kanyi Kimondo made by the accused persons on 25<sup>th</sup> July 2019. At the material time, five pre-bail reports were filed in respect of each accused persons and the prosecution was not opposed to the release of the accused persons on bail. However, the judge noted that there were still security concerns at the time and that the concerns of the victim of the offence had not been taken into account. As a result, he denied the request for bail and ordered that the trial be fast-tracked in the interest of justice.
3. On 15<sup>th</sup> December 2020, the accused persons presented a motion seeking a review of the refusal of bail made on 25<sup>th</sup> July 2019. They deposed that there was no cogent, very strong and specific evidence to justify the denial of bail. Moreover, they contended that they will not interfere with witnesses and are not a flight risk as they have known fixed abode. The application for review of bail was contested by the



prosecution. The court, in refusing the bail application reiterated the concerns in the ruling delivered on 25<sup>th</sup> July 2019. Specifically on the issues of security since other suspects were still at large as well as the concerns of the victim's family. He pointed out that these concerns had not been addressed in the said application for bail. He proceeded to dismiss the application for review of the refusal of bail as no sufficient grounds had been advanced to warrant the review order.

4. The accused persons made a further application for review of bail against the court's two earlier ruling denying the same. The application was dated 31<sup>st</sup> January 2022 and set down for hearing on 7<sup>th</sup> March 2022. When the application came for hearing of review for bail application on 7<sup>th</sup> March 2022 before Justice Kimondo, the learned judge recused himself from hearing the case and directed that the file be placed before Justice Wakiaga for further orders.
5. On 30<sup>th</sup> May 2022, Justice Wakiaga considered the application and called for a pre-bail report from the probation services. He also directed that the pre-bail report should include the victim impact assessment for the court's consideration. The application was opposed by the prosecution on the basis that Simon Wachira (PW1) had to testify before the accused persons could be admitted to bail. However, Justice Wakiaga was transferred before he could render himself on the Application for bail.
6. When the matter was scheduled for hearing on 1<sup>st</sup> April 2025, the accused persons revisited the application for review of refusal of bail/bond and the court directed that the same be heard on 21<sup>st</sup> May 2025. At the bail hearing, the accused persons highlighted the fact that the PW1 had since testified and there was therefore no reason to deny the accused persons' bail/ bond. It was also contended that the 2<sup>nd</sup> accused is sick and should therefore be released to seek medical treatment outside prison. The prosecution did not oppose the application of bail, instead, they urged that should the court be pleased to release the accused persons on bail, the same should take into account the seriousness of the offence and include a surety.
7. Pre-bail reports were filed in respect of each accused person taking into account the perspective of the victim's family. The probation services recommended that the accused persons be admitted to bail/ bond subject to the discretion of the court. Notably, the victim's family were opposed to the release of the accused persons on bail/bond as they felt that justice would be best served if the accused persons remained in custody. The Delmonte farm was not opposed to the accused persons being released on bond, however, they expressed that the accused should live elsewhere to avert any security concerns by angry members of the public should such a situation arise.
8. In the respectful view of this court, while not hearing an appeal from the terms of the order on bail by the Court of equal jurisdiction, the court has jurisdiction and discretion, in the same manner as when previously constituted, to consider an application for review on the grounds of change of circumstances.
9. On application for review of bail or bond, the applicant must prove to the satisfaction of the court that there has been change of circumstances to warrant grant of the orders sought. See *Republic v Diana Suleiman Said & another* [2014] eKLR.
10. In this matter the court was clear in its mind, that the application for review shall be considered when adequate considerations have been made regarding security since some suspects were still at large and sentiments of the victim's family taken into consideration. The pre bail reports submitted to this court dated 25<sup>th</sup> October 2022 demonstrate that the area around Del Monte farm has since calmed down due to passage of time. Also, Del Monte farm has enhanced its security but are of the firm view that the accused persons should not live within the precincts of the farm to avoid awakening the anger of



the community around the company. The prosecution also urged that the accused persons should not be admitted to bail/ bond unless PW1 is recalled to testify and produce a crucial exhibit.

11. It is clear that the said PW1 has since testified and thus there is no longer any issue that stands against the accused persons being admitted to bail at this point. Witnesses have now testified and their evidence preserved. I am therefore satisfied that there has been change of circumstance from the time the accused persons were first denied bond to the time of this ruling. It is therefore clear that they are entitled to review of the orders denying them bond, having placed adequate material on the change of circumstances as stated herein.
12. The only issue which the court now has to determine, is whether having heard and recorded the evidence of six (6) prosecution witnesses, there now arises the issue of the strength of the prosecution case as a compelling reason, to enable the court deny the same bond, on account that having known the case against them, there is real likelihood and or temptation to abscond, so as to defeat the course of justice.
13. The High Court in *Republic v Irungu alias Jowie & another (Criminal Case 51 of 2018)* [2020] KEHC 8361 (KLR) (Crim) remarked that:

“Whereas it is clear that the court has discretion to grant bail at any stage during trial, when the application for bail is made during the course of trial, one of the compelling reasons which the court has to take into account is the strength of the prosecution, as provided for under the Bail and Bond Policy Guidelines at 4.9 (b) as follows:-

“An accused person should not be subjected to pre-trial detention where the evidence against him or her is tenuous, even if the charge is serious. Conversely, it may be justifiable to subject an accused person to pre-trial detention where the evidence against the accused person is strong. For example, where all the prosecution witnesses have testified and the accused person is aware of the weight of the prosecution’s case against him or her, it is presumed that such a person has an incentive to abscond as should therefore be denied bail – see *Republic v Margaret Nyaguthi Kimeu* [2013] eKLR.”

14. The court in the Jowie case (*supra*) further remarked that:

“16. .. the strength of the prosecution case in itself, alone is not a good ground to deny an accused person the enjoyment of his constitutional right to bail. It must be demonstrated that by virtue of the strength of the prosecution case, there is a great incentive on the part of the accused person to abscond so as to defeat the course of justice. At this stage the court is not expected to go into the merit of the case. In making the said determination, the court must always balance between the conflicting interest of the State to bring offenders to trial and to dispense justice and the protection of the right of citizens, and the presumption of innocence, which require that no one without justification should be deprived of personal liberty.”

15. The court at this stage in the trial, is not in a position to conduct a risk assessment as to whether the accused persons are likely to abscond, should they be released on bail and therefore takes the view that unless the bail terms and conditions cannot guarantee their attendance to court, a person who has not been convicted for an offence is entitled to bail, unless compelling circumstances militate against his admission to bail.



16. In the Jowie Case, Wakiaga J, remarked thus:

“An accused person cannot be kept in detention pending during trial as a form of anticipatory punishment. The presumption of not guilty 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 any reasonable doubt and not on the strength of evidence so far tendered. This is the purpose for which Article 49(1)(h) of *the Constitution* and Section 123 of *Criminal Procedure Code* are part of our legal system.”

17. It is trite that the purpose of bail and bond is to secure the attendance of the accused person to court in accordance to the Bail and Bond Policy Guidelines, restated as general guidelines at Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision – making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences”.

18. Having stated the legal principles and considered the affidavits and the pre-bail reports in respect of all the accused persons and oral submissions by the parties, I find that there are now no compelling reasons to enable me deny the accused persons their right to bail. The evidence of PW1 has now been secured, there has been no evidence of any contact with prosecution witnesses during the period they have been in custody and the likelihood of being a flight risk can be adequately mitigated through appropriate bail/bond terms.

19. Article 49(1)(h) of *the Constitution* provides that:

An accused 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.

20. Therefore, the issue that remains for determination is the question of reasonable bail terms. As stated herein the bail/bond terms issued by the court must be those that are reasonable not amounting to denial of bail and will secure his attendance at the trial. The accused persons face a charge of murder, wherein one of the possible sentences upon conviction is death, which must be taken into account.

21. This court has looked at similar cases of murder, which have attracted much attention where the accused persons were released on bond as follows:

- a. *Republic v Njoroge (Criminal Case 20 of 2020)* [2024] KEHC 10661 (KLR) where the accused’s person bond was initially set at 2,000,000.00 but reviewed to Ksh. 500,000.00;
- b. *Republic v Guyo (Criminal Case E059 of 2023)* [2023] KEHC 24682 (KLR) where the accused person was initially released on bail terms of Ksh. 1 million bond with one surety or in the alternative a cash bail of Kshs.500,000
- c. In *Republic v Wanjiku & another (Criminal Case E002 of 2024)* [2024] KEHC 4663 (KLR) the court released the accused persons on bond of KShs,2,000,000/= with two sureties of like sum.

22. The prosecution has so far called six (6) witnesses, Mr. Mwangi, Prosecution counsel, has informed this honourable court that he has about ten (10) more witnesses before close of the prosecution case. The application by the accused persons herein is therefore made in the midst of a trial, therefore, the accused



persons are well acquainted with the nature of the prosecution case. The court should therefore take this into account in setting the bond terms.

23. I am therefore satisfied that the following bond terms are reasonable to secure the attendance of the accused persons at the trial:
- a. Bond of Kenya shillings one million (Ksh 1,000,000) with two (2) sureties of similar amount.
  - b. They shall not make any contact with any prosecution witnesses, including those who have testified against them, in whatever nature unless the same is done in the presence of the Investigating Officer in this case.
  - c. The accused persons shall not live or be seen within the precincts of Delmonte company unless with the permission of the court and in the company of the Investigating officer in this case.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>th</sup> JUNE, 2025.**

**HON. T. W. Ouya**

**JUDGE**

For Accused 1,2,3.....Nyakeriga

For Accused 4.....Ms Kuria Holding Brief for Mbiyu Kamau

For Accused 5.....Omagwa

For Respondent: P. Mwangi

Court Assistant.....Brian

