



Maina v Republic (Criminal Case 43 of 2018) [2025] KEHC 11398 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A**

CRIMINAL CASE 43 OF 2018

TW OUYA, J

JULY 31, 2025

BETWEEN

JOSEPH TUMUTI MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application for bail by the applicant through his counsel based on the conclusion of the pre bail report that the accused person is suitable for bond/bail and medical reports indicating that the applicant requires close monitoring of his health. Counsel submits that the accused has strong community ties and married with children. That both are not flight risks and reside within the jurisdiction of the court.
2. Counsel prays for favorable bond terms due to their meagre financial capability.
3. Counsel Mwangi for the stated that the state did not have any compelling reasons to oppose the application for bail/ bond by the accused/ Applicant.
4. I have duly considered the application before this court together with the affidavit and submissions by counsel from both sides. This court underscores that bail pending trial may be granted upon request at reasonable terms at the discretion of the court.
5. I have also considered the two Bail/Bond Information Assessment Report dated 14th November 2023 whose import is that the accused person is suitable for bail/bond for reasons that he has strong family ties, is a reasonable member of the community and that his family is willing to have back in their home at Laikipia. The report points out further that the accused is not a threat to their family or to the community.
6. Further to the pre bail report, the applicant relies on a medical report from Murang'a County hospital dated 30th June 2025 indicating that the applicant suffers from diabetes and hypertension. The same



recommends that he requires proper monitoring I hospital, drug compliance and family support in addition to physiotherapy and regular monitoring.

7. Taking into account the above and the fact that the application is not opposed.
8. The law relating to bail /bond pending trial was espoused in the case of *Maalim v Republic* (Criminal Case E001 of 2022) [2022] KEHC 13266 (KLR), where the court stated:

“It is settled law that under article 49 (1) (h) of the *Constitution*, a person who has been arrested has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there are compelling reasons against such release.

A reading of this constitutional provision leaves no doubt that this right is guaranteed to every arrested or accused person irrespective of the seriousness of the offence charged. As correctly pointed out by the accused person in his supporting affidavit, the constitutional right to bond or bail pending trial is qualified not absolute as it is subject to existence of compelling reasons.

The *Constitution* has not defined what constitutes compelling reasons. This is left for determination by the trial court depending on the circumstances of each case.

However, the Court of Appeal in *Michael Juma Oyamo & Another V Republic*, [2019] eKLR has given guidance on what would amount to compelling reasons to warrant denial of bond pending trial. The court stated 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.

It is trite that the duty to demonstrate existence of compelling reasons lies squarely on the prosecution in cases where the state is opposed to the admission of an accused person to bond or bail pending trial. To discharge this burden, the prosecution must support with evidence the reasons advanced in opposition to grant of bond or if what is relied on is the commonly cited reason which is what has been advanced in this case that if released, the accused is likely to interfere with witnesses or that his safety may be compromised, the prosecution must place before the court material to demonstrate that their fear is well founded and justified. Mere allegations cannot suffice.

I cannot put it better than the Court of Appeal did in *Patius Gichobi Njagi & 2 others V Republic*, [2013] eKLR, where it stated as follows:

“.... where the State opposes bail on account of any of the often-cited and commonly known fears which it routinely expresses including, but not limited to the likelihood of the accused absconding and failing to attend trial; likelihood of interference with witnesses; the possibility of hostile and even violent reception of the accused by the community upon release, the state must do more. It must step out of the realm of imagination and speculation and provide the court with persuasive argument backed by facts and experiences, and circumstances unique to each individual case that would make the court appreciate the need to deny an applicant bail. As stated in the celebrated case of *Jaffer v Republic*, 1973 EA 39, the court cannot be called upon to speculate.”

I must state at this juncture that the overarching consideration in determining whether or not to admit an accused person to bond or bail pending trial is whether if released, the



accused will turn up for his trial or will abscond. Other factors the court ought to consider are set out in section 123 A of the *Criminal Procedure Code* and the Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 and include the following:

- a) Whether the accused is likely to commit, or abet the commission of a serious offence;
 - b) Whether the accused is likely to endanger the safety of victims, members of the public or national security;
 - c) Whether the accused is likely to interfere with witnesses, investigations or evidence;
 - d) Whether it is in the public interest to detain the accused person in custody.”
9. This court takes into account all the above, including the applicant's medical condition of the applicant, the favorable bail/bond assessment report and the fact that the application is not opposed as indicators qualifying the applicant for bail/ bond.
10. For the above reasons, this court is inclined to grant this application for bond/bail. The application is hereby allowed and bond is granted on the following terms:

The accused/Applicant is granted bond of Kshs. 500,000 with a surety of a similar amount.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31ST JULY, 2025.

HON. T. W. OUYA

JUDGE

For Accused.....Mwangi Wanjiku

Prosecution.....P. Mwangi

Court Assistant.....brian

