



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Case E034 of 2022)
[2025] KEHC 11399 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E034 OF 2022**

TW OUYA, J

JULY 31, 2025

BETWEEN

PETER MUTURI MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application for bail by the applicant through his counsel supported by grounds on the face of the application and affidavit sworn by the applicant. Counsel prays for favorable bond terms due to their meagre financial capability.
2. The accused had approached this court vide a Notice of Motion dated 7th April, 2025, seeking to be released on bail or bond on reasonable terms pending the conclusion of his trial, on grounds that he has been in remand from the year 2022; that he suffers from hypertension, diabetes and Schizo affective disorder; that his brothers were ready and willing to post his bail; that his brothers are willing to take him in and assist him in reintegrating into society and ensure that he takes his medication, reports to Kiria-ini police station, and ensure that he has no communication with any members of the deceased family.
3. The application mentioned above was dismissed vide ruling dated and delivered on 3rd July 2025 which cited among other reasons, the possibility of witness interference and lack of the accused's fixed abode.
4. It is apparent that the instant application is a reaction to this court's Ruling on 3rd July 2025 which was concluded with a rider that the accused was free to make a fresh application should he demonstrate that he has an alternative fixed place of abode away from the locus in quo and the key prosecution witnesses. In effect, this is a review application made only one week after this court's ruling denying the accused bond/bail.



5. I have carefully considered the application in its entirety alongside the brief submissions by both Counsel. Counsel for the applicant has gone a step further and availed an affidavit by the Applicant's son to the effect that he will take him in and ensure that he not only takes his medication but that he will stay away from the prosecution witnesses and also attend court when required to do so. Counsel for the state in opposing the admission of the applicant to bail urges the court not to consider granting bail at this point being that the matter is still fresh and none concerned in particular with the witnesses have testified. Counsel urges the court to balance the rights of the accused with the interest of justice to the victim of the offence.
6. In regard to the above, I have no doubt that the accused's family have demonstrated their commitment to take care of the accused including the accused including his accommodation medication.
7. Having done so, I find that the main issue for determination before this court is whether the prosecution has established compelling reasons, warranting the denial of bail or bond to the accused pending his trial at this point. The main reason raised at this point is that the matter is still fresh and no witness has testified as yet. This is coupled with the fact that the key witnesses are close relatives of the accused. In particular, it is pointed out that one Gerald Macharia Mwangi This is a factor that was pointed out in the ruling delivered on 3rd July 2025. Who is a key witness happens to be the brother of the accused.
8. It is trite that under Article 49 (1) (h) of the Constitution of Kenya, 2010, an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. Article 49 (1) (h) of the Constitution stipulates as follows:

“an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
9. From the above provision of the Constitution , it is evident that whereas an accused person has a constitutional right to be released on bail or bond pending trial, the said right is not absolute and may be curtailed where the prosecution demonstrates the existence of compelling reasons warranting denial of that right.
10. What constitutes compelling reasons was discussed in the case of Republic v Francis Kimathi (2017) eKLR; where the court expressed itself as follows:

“There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution .”
11. Having stated that, the factors that should guide this court when considering an application for bail or bond pending trial are contained in Section 123A (2) of the Criminal Procedure Code, as follows:

“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. Additionally, The Judiciary Bail and Bond Policy guidelines, 2015, at page 25, paragraph 4.26, also provides for the factors that could persuade the courts to deny an accused person bail or bond pending his trial. It states as follows:

“The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- a. That the accused person is likely to fail to attend court proceedings; or
- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
- c. That the exception to the right to bail stipulated under Section 123A of the [Criminal Procedure Code](#) is applicable in the circumstances; or
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e. That the accused person is likely to interfere with witnesses or evidence;
- f. That the accused person is likely to endanger national security; or
- g. That it is in the public interest to detain the accused person in custody.”

13. This position was restated by the court in the case of [Republic v Dwight Sagaray & 4 others](#) (2013) eKLR; as follows:

“As I have held before, interference with prosecution witnesses is in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the trial and is an affront to the administration of justice. For the prosecution to succeed in persuading the court on this criterion however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others.”

14. Additionally, the court in [Republic v Joktan Mayende & 3 others](#) [2012] eKLR; stated as follows regarding the issue of witness interference:

“All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses



or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”

15. On my part, I have gone through the records of the trial court, and it is evident that some of the key prosecution witnesses in this case have a close familial relationship with the accused persons as they are his own biological brothers; as such the allegation by the prosecution that the accused may interfere with the said witnesses cannot be said to be farfetched, considering that one of the factors that would lead the court to assume that there is a likelihood of witness interference is if the accused and the prosecution witnesses have a close familial relationship.
16. I am therefore of the view that it would not be in the interest of justice if the accused is released to the custody of his three (3) brothers, two of whom are key prosecution witnesses in this case. I say so because whereas the accused may not interfere with the said witnesses by issuing threats or intimidations, if released to them, the accused and his brothers will most likely spend a considerable amount of time together and his presence may directly or indirectly influence the said witnesses to give evidence in a particular way or it may influence them not to give evidence at all; thereby jeopardising the prosecution’s case.
17. Flowing from the foregoing, I am of the considered view that the prosecution has demonstrated the existence of compelling reasons warranting the denial of bail or bond to the accused person. The Application for bond/bail is denied at this stage. The following directions will apply:
 - i. Matter to be listed for hearing on priority basis on 25th September 2025.
 - ii. The prosecution to avail all the key witnesses on the said date
 - iii. Application to be reviewed after the testimony of the two key witnesses

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31st JULY, 2025.

HON. T. W. Ouya

JUDGE

For Appellant.....Nyamu

For Respondent.....P. Mwangi

Court Assistant.....Brian

