



REPUBLIC OF KENYA



**Republic v Gicharu (Criminal Case E020 of 2022)
[2025] KEHC 11296 (KLR) (Crim) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E020 OF 2022**

MW MUIGAI, J

JULY 31, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

TIMOTHY THUO GICHARU ACCUSED

RULING

Information

1. The accused person Timothy Thuo Gicharu is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap.63 Laws of Kenya.
2. Particulars of the offence being that on the 8th day of March, 2022 at around 0500 Hrs of Dandora Phase 3 estate in Buruburu Sub- County, within Nairobi County murdered Jasmin Bianca

Accused Persons's Submissions

Introduction

3. The Accused person has been charged with the Offence of murder contrary to Section 203 as read with 204 of the *Penal Code*. Sometime in February 2023, the Accused person made an application for consideration for bail pending trial and the Accused person's counsel has received the prosecutions Affidavit in opposition for bail. It is our contention that our client is presumed innocent until proven galry, as enshrined in the Kenyan legal system. We appeal to the court's discretion to grant bail considering the circumstances of the case and our client's right to liberty,



Facts of the Case:

4. The Particulars of the case are that on the 8th day of March 2022, at around 0500Hrs at Dandora Phase 3 estate in Buruburu sub county within Nairobi, the Accused person murdered Jasmine Bianca.
5. Since the date of arrest in March 2022, the Accused has been in custody for 2 years without the trial commencing and the Accused person being offered a chance to be heard and put forth his case. Further, the Accused has been denied the opportunity of reuniting with his family comprising a wife and one child. The Accused person suffers from a rare condition known as alopecia wherein, he has sought assistance from prison authorities who have declined to offer any assistance to the Accused who continues to languish in prison.
6. The accused person's plea-taking had been delayed principally because the High Court at Milimani did not have a resident judge to preside over the matter. The accused person is apprehensive that this state of affairs could unnecessarily impede the expeditious disposal of this case, to the detriment of the accused, who risks losing his employment by reason of his incarceration.

Legal Grounds for Bail:

7. Presumption of Innocence: Our client is entitled to the presumption of innocence until proven guilty, Denial of bail would violate this fundamental principle of justice. See Art. 50 Constitution of Kenya.

Constitutional Rights:

8. The Kenyan Constitution guarantees the right to liberty, fair trial, and bail, except in exceptional circumstances. Our client has no prior criminal record and poses no flight risk or danger to society,

Community Ties and Family Support

9. The Accused person has deep roots in the community and strong family ties. They have a fixed place of residence and are willing to comply with any conditions set by the court. The Accused person has a known residence wherein, any contact persons which the court may require will ensure attendance of the accused person for trial

Likelihood of Appearing for Trial:

10. Our client has willingly surrendered themselves to the authorities upon learning of the charges. They have expressed a strong willingness to cooperate with the legal process and attend all court proceedings

Conditions of Bail

11. We propose the following conditions for bail, which will ensure the court's concerns regarding flight risk and public safety are adequately addressed:
 - Surrender of Passport and Travel Documents.
 - Regular Reporting to the Police Station.
 - Compliance with any Restriction on Movement orders.
 - Providing a Surety, contact persons or bail bond as Required by the Court.
 - Any other Conditions Deemed Necessary by the Court.



Prosecutions Affidavit to oppose Bond

12. On 1st February 2023 No. 91918 PC Collins Shivatse, of DCI Dandora, filed an Affidavit to oppose Bond/Bail and stated as follows:
1. That I am a male adult of sound mind and one of the Investigating Officer in this matter hence competent to swear this affidavit.
 2. That although Article 49(1) (h) of *the Constitution* grants the accused right to bail, the right is not absolute and should be exercised judiciously under courts discretion.
 3. That the accused, Timothy Thuo was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* whereby he is alleged to have murdered the deceased, Jasmin Bianca on 8th March 2022.
 4. That the accused and deceased, were neighbours at Dandora Phase 3 Estate in Buruburu Sub-County within Nairobi County.
 5. That the deceased was a minor aged 3 years 2 months.
 6. That the house the accused was staying in at the time of the commission of the offence before fleeing was a rental one and he has no other known place of abode.
 7. That the accused person was jobless and has no known workplace or place of business.
 8. That he should not be released on bond as he has proven himself to be a flight risk and this diminishes his likelihood of not only attending court but of being traced in the event of absconding.
 9. That some of the prosecution witnesses in this case as per the committal bundles provided to the court and defense are well-known to the accused person and still reside in the apartments that the accused was renting. These relationships create legitimate anxiety about the influence the accused may have on them if he is released on bond.
 10. That the accused person does not qualify to be admitted to bail pending trial for his own personal protection since, immediately prior to his arrest, members of public while inquiring on the whereabouts of the deceased after her items were found in the accused's house, administered mob injustice upon the accused person.
 11. That the neighbours at Dandora Phase 3 where the accused resided are still emotive about this incident considering the circumstances under which minor's heinous murder was carried out and there's a very high probability of the irate members of public attacking him in the event he is released on bond.
 12. That the accused person herein has been charged with the serious offence of murder and if found guilty the punishment meted out could be that of the death penalty and therefore there are more probabilities and incentives for the accused person to abscond if released on bail or bond pending the determination of the hearing.



Accused person's opposition to the Probation Officer's Report and in support of the right to Bail/Bond

Introduction

13. The Accused seeks to be released on reasonable bail/bond terms pending trial.

Legal Framework

14. Article 49(1)(h) of *the Constitution* of Kenya, 2010 guarantees the right of an arrested person "to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

15. The burden of establishing "compelling reasons" rests on the prosecution, as held in Republic vs Danson Mgunya & Another [2010] eKLR, where the court stated:

“The burden is on the prosecution to demonstrate the existence of compelling reasons for denial of bail”

16. Compelling reasons must be grounded in evidence, not speculation, suspicion, or generalizations. See Republic v Zacharia Okoth Obado [2018] eKLR where the Court held:

“Bail is a constitutional right and limitations must be based on clear and justifiable grounds.”

Specific objections to the Probation Officer's Report

17. Alleged Poor Relations with Family and Community Based on Drug History

18. The report references the Accused's alleged poor relations with family and community due to drug and substance abuse. However, this assertion is:

- * Unsubstantiated by any medical or rehabilitative evidence;
- * Based solely on subjective interviews and hearsay;
- * Contrary to the presumption of innocence under Article 50(2) of *the Constitution*.

19. The mere fact of alleged drug use, without a professional diagnosis or evidence of recent conduct violating bail terms, cannot amount to a compelling reason.

20. In Republic Joseph Kuria Irungu alias Jowie & Another (2019) eKLR, the court emphasized the need for verifiable concerns, stating

“Allegations including those made in social inquiry reports must be substantiated by objective evidence before they can be used to restrict liberty.”

21. Risk of Breach of Bond Terms Due to Addiction Pure Speculation.

22. The report speculates that the Accused may not adhere to bond terms due to addiction .

This ignores the fact that:

* In 2018, the Accused was released on bail in Makadara Law Courts and fully complied with all bond conditions .

* There is no record of breach or absconding.



23. The court in Republic vs Jokian Mavende & Others [20121] KLR held:

“The mere apprehension that an accused will abscond is not enough such apprehension must be supported by evidence.”

Allegations of Possible Interference with Witnesses.

24. The report refers to fears from family/community that the Accused may interfere with witnesses.

This is mere allegation with no affidavit or complaint from any witness, and not supported by any factual incidents.

25. Republic vs David Muchiri Njuguna (2019) eKLR, the court stated:

“Interference with witnesses must be supported by evidence or a real possibility. Allegations alone are not enough.”

Hostility from the Community-Not a Ground to Deny Bail

26. Alleged hostility from the community is not a reason to deny bail but rather a basis for relocation or variation of residence as part of bail terms.

27. In Republic vs Mohammed Abdow Mohamed[2013] eKLR, the court held:

“Community hostility, while relevant to conditions of release, cannot override the right to bail unless it endangers the administration of justice.”

Prayer And Conclusion

28. The probation officer's report should be treated with caution and not relied upon to curtail the accused person's constitutional right to bail.

29. The Accused has a known fixed abode, is willing to comply with any terms set by the Court, and has previously demonstrated compliance with bail terms in a criminal case.

30. The Court is urged to disregard the unsupported and speculative conclusions in the probation report and admit the Accused to reasonable bail/bond terms.

Republic's Submission on Bail Opposition

31. The accused person herein was charged with 1 count of murder contrary to section 203 as read with section 204 of the *Penal Code*. Particulars are that on the 8th day of March, 2022 at around 0500hrs at Dandora Phase three (3) area within Nairobi County within the Republic of Kenya murdered Jasmin Bianca

32. The prosecution filed 2 affidavits dated 1st February, 2023 sworn by the investigating officer PC Collins Shivaste. The accused has filed submissions challenging the state's affidavits in opposition to his release on bond.

33. Article 49(1) (h) of *the Constitution* gives an accused person a right to be released on bail unless there are compelling reasons not to be released. The state has however, identified compelling reasons why the accused should not be admitted to bail pending trial.



Accused's own security may not be guaranteed

34. At paragraph 5 of our affidavit, we retaliated that the accused person does not qualify to be admitted to bail pending trial for his own personal protection. The community is hostile and his release on bond/bail may trigger revenge attacks. Prior to his arrest the community had administered mob justice upon the accused before he was saved by the police. We acknowledged the accused's constitutional right to bond/bail but if released on bond more harm may come upon him considering the victims described the death of their kin to be devastating and they opposed to this bond/bail application.

35. Republic v Peter Chege Mucheru [2018] eKLR, Kimondo J held,

“There is palpable anger at the victim's home. The victim's Protection Act 2014 requires the views of the victim be taken into account at this stage. I empathize with the accused. But I reached the conclusion that his safety is not guaranteed at the locus in quo. That to me is a compelling reason not to release the accused on bail. The application for bail is refused.”

Flight Risk

36. This can be found at paragraph 7,869 of the state's affidavit. In any event, the accused has not provided details of his place of abode in the event he is released on bail.

37. In the case of Republic v John Gatambia Gathoni [2017] EKR, the Judge stated:

“However the prosecution's fears that the accused is a flight risk is not just flippant. The accused person has given the prosecution reason to be apprehensive that he may not ultimately show up for his trial. He did this by running away after the incident. He was arrested more than 150kms away from Narok County and even then, only because a relative happened to be in the area. The accused person's explanation that he ran away due to the shock of the incident and needed to calm the tensions in the family is implausible.”

38. We urge this court to deny the accused bond until the neighbors, witnesses as well as other close family members of the deceased have tendered their testimony in court. This will guard against witness interference and or intimidation and also the possibility of the accused being a flight risk.

Analysis & Determination

39. This Court considered the application for grant of bail and bond Affidavit to oppose Bail & Bond Submissions and the Pre-Bail Report.

Bail is a constitutional right enshrined in Article 49(1)(h) of *the Constitution*. The test the Court is required to consider bail and bond in appropriate cases is similarly stated in Article 49(1)(h) of *the Constitution*. It is only upon the Prosecution (ODPP) proving compelling reasons that the Court will deny bail. Section 123 & 123A of the CPC and Bail & Bond *Policy Guidelines of 2015* provide guidance on consideration of bail & bond Application.

40. Article 49(1)(h) of *the Constitution* grants bail for all offences, the gravity of the offences notwithstanding. The presumption of innocence is enshrined in Article 50(2) of *the Constitution*. Section 123A of the *Criminal Procedure Code* allows the accused person to request for bail, and the court to grant in appropriate cases or review in new, changed or urgent circumstances.



The Affidavit opposing bail and bond depicts the Applicant s one with no fixed abode after fleeing the rental place, he was not employed and had no business or place of activity and if released on bond would not be traced without a definite physical address and thus considered a flight risk.

41. The Submissions by Prosecution are that the Applicant was arrested by the members of public in relation to the instant matter. The Family of the victim and community re still bitter and hostile and for his own safety bail and bond should be denied. See Republic vs Peter Chege Mucheru 2018 eKLR.

The Bail Report filed on 28/5/2025 depicts the Applicant an unreliable, irresponsible and untrustworthy person who is alleged to adversely affected family due to alcohol and drug abuse. The Community is hostile and outraged, and the Applicant has brushed with the law before. He is said to be of bad character and very aggressive.

42. The Applicant rebutted the Bail Report content and submitted that the poor family relations were unsubstantiated and based on subjective interviews. The alleged alcohol and drug use was not backed by medical or professional diagnosis. These allegations did not amount to compelling reasons and he remains innocent unless proved guilty after full trial.

43. Bail determination must balance the rights of the accused persons and the interest of justice. On the one hand, to preserve the liberty of an accused person, who is presumed to be innocent, to engage in family and community activities and to take an active part in the planning of his or her defense.

44. On the other hand, the State has a duty to prosecute crimes, which may entail qualifying the individual right to liberty. The State has a duty to ensure public safety between the time of arrest and trial of accused persons, and a duty to protect the integrity of the criminal justice system by preventing intimidating witnesses or interfering with the evidence. Also, where there is convincing evidence that the accused person will endanger particular individual, victims of the crime or the public at large, or even commit a serious crime, it also becomes necessary to subject an accused person to pretrial detention. The need to balance the rights of accused persons with justice of the matter in the instant case tilts towards this Court erring on the side of caution.

Disposition

45. For now, bail and bond is denied due to Applicant's lack of fixed abode, permanent physical address and/or family and Community connection. Review may be undertaken if and when circumstances change to warrant grant of bail/bond.

RULING DELIVERED DATED & SIGNED IN OPEN COURT CRIMINAL DIVISION HIGH COURT ON 31/7/2025.

M.W. MUIGAI

JUDGE

