



**Republic v Kuria (Criminal Case E010 of 2025)
[2025] KEHC 11459 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E010 OF 2025**

**TW OUYA, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LUCAS CHEGE KURIA ACCUSED

RULING

1. The accused person has made an application seeking to be granted favourable bail and bond terms. The accused herein was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. He pleaded not guilty on 19th June 2025 and is in police custody awaiting trial.
2. Pursuant to the notice of motion application dated 8th July 2025, the court directed that a pre bail report be availed in respect of the accused person. It is Counsel's contention that the report has now been availed on record and that nothing now stands in the way of the accused in getting bail.
3. In opposing the application, the prosecution filed a response vide a replying Affidavit sworn by the investigating officer on 17th June 2025 raising issues which the prosecution believes to be compelling reasons for the court to deny ton deny the accused bond.
4. Counsel for the state is opposed to the application for bail at this juncture citing interference with witnesses. The background provided is that the accused and the victims are cousins and that the witnesses are close family members. It is also apparent that the hearing of the case has not yet taken off. Counsel argues that the court should not consider granting bail at this early stage of the matter since key witnesses have not testified and there is a high likelihood of interference.
5. The pre bail assessment report dated 2nd July 2025 presented before court indicates that the accused is a young man who has worked in different parts of the country and was involved in business and later, employment. The victim's family is not opposed to his being released on bond save that their safety



concerns should be addressed. The report states further that the accused's family is willing to stand surety for him in case bond is granted.

6. I have duly considered the application for reasonable bail/bond terms by the accused persons, the pre bail report on the accused person, supporting affidavit by the investigating officer and the submissions by both Counsel.
7. Counsel for the accused is of the view that nothing stands in the way of the accused in getting bond since the pre bail reports availed to the court are favourable to the accused. Counsel points out the apprehensions by the Counsel for the state are tantamount to testifying from the bar as they are not supported by the Investigating officer's affidavit.
8. Counsel for the state has raised an objection based on one issue which is the likelihood of interference with witnesses. He cites that the eye witnesses to the offence are close relatives being maternal cousins to the accused and that their interaction at this stage may compromise the trial. Whereas this apprehension is not supported by the pre-bail report, it is a basis for a compelling reason which cannot be wished away.
9. It is worthy to note that the fact that the intended witnesses and the accused are family is very reason that the probation has recommended bail while the same is relied upon by the prosecution as a compelling reason.
10. In the respectful view of this court, this court has jurisdiction and discretion, to consider review of this application which was in abeyance pending the pre bail reports by the Probation office. The said report has not raised any fear of apprehension of likelihood of interference.
11. 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.”

12. 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.”

13. The court at this stage in the trial, is not in a position to conduct a risk assessment as to whether the accused person is likely to abscond, should he be released on bail and therefore takes the view that unless the bail terms and conditions cannot guarantee his 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.
14. 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.”
15. 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”.
16. Having stated the legal principles and considered the affidavits and the pre-bail report in respect of the accused person and oral submissions by the both Counsel I find that likelihood of interference with the key witness is compelling reason for this court deny the accused persons bail/ bond at this juncture.
17. Having made the above finding, this court notes that the two key witnesses is not only crucial for the prosecution case, but that it stands in the way of the accused person to his access to the right to bond/ bail.
18. The court proceeds to make the following orders:
 - i. That this matter be mentioned before the Deputy Registrar date 10th Nov 2025 with a view to fixing a hearing date on a priority basis
 - ii. The Prosecution to secure attendance and testimony of all the key witnesses at the first instance.
 - iii. Bail/Bond Application to be reviewed upon testimony of the two key witnesses.

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

HON. T. W. OUYA

JUDGE

For Appellant.....Wanjiru Maina HB Matu

For Respondent.....P. Mwangi

Court Assistant.....Brian

