



**Republic v Manyara & another (Criminal Case E003 of 2025)
[2025] KEHC 11306 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E003 OF 2025
DR KAVEDZA, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GIDEON OGAO MANYARA 1ST ACCUSED

EDWIN MOMANYI 2ND ACCUSED

RULING

1. The 1ST and 2nd accused were jointly charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code*, Cap 63 Laws of Kenya. The particulars of the offence are that on 9th February 2025 at Galana Petrol Station, Kawangware Area Dagoretti Sub – County within Nairobi County jointly with others not before this court murdered Payeso Aden.
2. They pleaded not guilty. They have now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. CPL John Musembi, an investigating officer with DCI Dagoretti, filed an affidavit opposing the release of the accused persons on bail. He states that although *the Constitution* provides for the right to bail, it is not absolute. The accused are jointly charged with others not before court for the murder of Payeso Aden on 9th February 2025. The deceased was allegedly assaulted by the accused and others, and later died from his injuries. He avers that the accused fled after the incident and were only arrested through concerted efforts.
4. He argues that they are flight risks and may interfere with key eyewitnesses, all of whom are known to them. He adds that there is a risk the accused may regroup with their accomplices still at large and abscond. He urges the court to deny bail, citing the seriousness of the offence and the strength of the prosecution’s evidence.



5. The 1st accused, opposes the prosecution's application to deny him bail. He contends that the allegations raised are unproven and should not be the basis for denial of his constitutional right to bail. He argues that there is no evidence to support claims that he is a flight risk or that he will interfere with witnesses. He maintains that he was arrested immediately after the incident and did not flee, as suggested.
6. He further denies knowledge of the alleged witnesses and any capacity to influence or intimidate them. He submits that the prosecution's fears are speculative and unsupported by any material evidence. He affirms his willingness to attend court and defend himself against the charges. In conclusion, he urges the court to disregard the prosecution's objections and to grant bail on reasonable terms.
7. Similarly, the 2nd accused, Edwin Momanyi, opposes the prosecution's bid to deny him bail. He argues that the allegations relied upon are unproven and cannot lawfully justify the denial of bond. He maintains that he was arrested immediately after the incident, as shown in police and witness statements, and did not flee as claimed. He denies being a flight risk and has attached a letter from the local administration confirming his residence and good character.
8. He also challenges the claim that he could interfere with witnesses, noting that the prosecution has not identified any such persons or provided proof of risk. He contends that the evidence against him is yet to be tested and insists that denying bail on mere allegations undermines his constitutional rights. He assures the court of his full cooperation and presence during trial and urges that he be granted bond on reasonable terms.
9. The application was canvassed by way of written submissions which have been duly considered.
10. Article 49(1) (h) of *the Constitution* 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 for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
11. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of *the Constitution*, the courts are to be guided by the provisions of section 123A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides:
 - “In such a determination the courts are to factor the following exceptions to limit the right to bail;
 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (d) The strength of the evidence of his having committed the offence:
 - (2) 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 if released on bail, it is likely that he would fail to surrender to custody;



(b) Should be kept in custody for his own good.

12. The probation report on record indicates that both accused persons are of modest backgrounds, with limited formal support structures and no previous convictions. The 1st accused is 28 years old, a former salesperson and a father of one. His wife and child were forced to relocate after the incident, citing threats and financial hardship. He has the support of extended family and intends to relocate to his rural home if released. However, the investigative agencies expressed concern that he fled after the offence, is a flight risk, and may interfere with witnesses.
13. Similar reservations were raised regarding the 2nd accused, a 22-year-old apprentice mechanic from Nakuru, whose family lacks financial means and whose local administrators expressed no confidence in his ability to comply with bond terms. Efforts to trace the victim's family were unsuccessful, and the community has not strongly vouched for either accused. The report recommends withholding bond for both, citing the seriousness of the charge, risk of flight, and likelihood of witness interference, with an option for future review.
14. Upon consideration of the material before court, several issues arise. First, both are said to have fled and gone into hiding following the offence, and their arrests required substantial effort from the police and members of the public. This establishes a real risk of flight; particularly given the seriousness of the charge they face.
15. Second, the prosecution has indicated that the accused persons reside in close proximity to key witnesses, most of whom are personally known to them. There is therefore a legitimate concern that, if released, they may interfere with or intimidate these witnesses, potentially compromising the integrity of the trial.
16. Third, the investigative agencies have highlighted that some of the suspects involved in the crime are still at large. Releasing the accused persons could enable them to regroup with their accomplices and further frustrate the course of justice.
17. Fourth, while both accused persons' families have expressed willingness to act as sureties, their limited financial means and the lack of fixed abode reduce the reliability of such undertakings.
18. In the circumstances, the Court finds that the prosecution has demonstrated compelling reasons under Article 49(1)(h) of *the Constitution*. The risk of flight, potential witness interference, and the broader interests of justice outweigh the accused persons' right to liberty at this stage.
19. Accordingly, the application for bail is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2025

.....

D. KAVEDZA

JUDGE

In the presence of:

Ms. Timoi for the Prosecution

Mr. Udoto for the 1st and 2nd Accused

Ms. Karimi Court Assistant.

