



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ndung'u (Criminal Case E005 of 2025)
[2025] KEHC 11404 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E005 OF 2025**

TW OUYA, J

JULY 31, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

BENARD CHEGE NDUNG'U 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 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. Counsel for the state is not opposed the application and as such has not filed any response.
4. A pre-bail report dated 3rd June 2025 was filed pursuant to court directions in respect of the accused person taking into account the perspective of the victim's family. The probation services recommends that the accused person be admitted to bail/bond subject to the discretion of the court. Notably, the both victim's and accused families are not opposed to the release of the accused person on bail/bond stating that court should give conditions that guarantee their safety. remained in custody.
5. The accused in his affidavit sworn on 2nd July 2025 has indicated that he is not a flight risk and has affixed abode at Kiambaba, a fact that is supported by the pre bail report.
6. 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.”

7. 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”.
8. 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 counsel for both parties, I find that there are no compelling reasons to enable me deny the accused persons their right to bail.
9. Article 49(1)(h) of the Constitution provides that:

‘An accused person has the right....

 - (h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.’
10. Therefore, the issue that remains for determination is the question of reasonable bail terms. As stated herein the bail/bond terms issued by the court must be those that are reasonable not amounting to denial of bail and will secure his attendance at the trial. The accused persons face a charge of murder, wherein one of the possible sentences upon conviction is death, which must be taken into account.
11. This court has looked at similar cases of murder, which have attracted much attention where the accused persons were released on bond as follows:
 - a. Republic v Njoroge (Criminal Case 20 of 2020) [2024] KEHC 10661 (KLR) where the accused’s person bond was initially set at 2,000,000.00 but reviewed to Ksh. 500,000.00;
 - b. Republic v Guyo (Criminal Case E059 of 2023) [2023] KEHC 24682 (KLR) where the accused person was initially released on bail terms of Ksh. 1 million bond with one surety or in the alternative a cash bail of Kshs. 500,000
 - c. In Republic v Wanjiku & another (Criminal Case E002 of 2024) [2024] KEHC 4663 (KLR) the court released the accused persons on bond of Kshs, 2,000,000/= with two sureties of like sum.
12. The prosecution has not raised any compelling reason to oppose the application for bail. Instead, the prosecution has indicated their intention to put in place the negotiation process for purposes of plea bargain. The court should therefore take this into account in setting the bond terms.
13. I am therefore satisfied that the following bond terms are reasonable to secure the attendance of the accused person at the trial:
 - a. Bond of Kenya shillings (Ksh 500,000) with two (2) sureties of similar amount.
 - b. The accused shall not make any contact with any prosecution witnesses pending hearing and determination of the matter.



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

HON. T. W. OUYA

JUDGE

For Applicant /Accused.....Wanjiru Maina

For Respondent.....P. Mwangi

Court Assistant.....Brian

