



**Republic v Iyanuoluwa alias Payday (Criminal Case E005 of 2025)
[2025] KEHC 11931 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E005 OF 2025
DR KAVEDZA, J
AUGUST 14, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ADENIYI MICHAEL IYANUOLUWA ALIAS PAYDAY ACCUSED

RULING

1. The accused was 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 28th April 2025 at about 6.00 pm at Tsavo Apartments along Naivasha road within Dagoretti Sub-County, Nairobi County murdered Emmanuel Abiodun Oyewole.
2. He pleaded not guilty. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. CPL Mutua Nzioka filed an affidavit dated 16th June 2025 opposing bail. He averred that the accused is a flight risk, having no permanent place of abode, gainful employment, or registered business in Kenya. Further, that the prosecution has supplied witness statements and other evidentiary materials, including those of D2 and D3, who are friends of the accused, creating a high likelihood of interference. The deponent further expressed concern about D4 and D5, who are former neighbours of the accused, with the risk of constant interaction before their testimony, which may compromise their credibility.
4. He urged that it would be in the interests of justice to deny bail and to continue detaining the accused until the conclusion of the case, which the prosecution intends to prosecute expeditiously. He prayed that the court find the reasons advanced to be compelling grounds for denying bail.
5. In rebuttal, the accused filed an affidavit dated 20th July 2025 in support of his bail application. He stated that he is a Nigerian national who has lived in Kenya since 2021 and is married to a Kenyan citizen with whom they have one child. He averred that he has maintained a known residence in Nairobi,



- currently in Lower Kabete, where he plans to continue living with his family if granted bail. In addition, that he is a member of the Chosen Believers Church in Kawangware and participates in Nyumba Kumi activities. The area chief knows him and can confirm his residence in Kenya for more than three years.
6. He asserted that when the incident in question occurred, he took the deceased to the hospital, paid the medical bills, and stayed with him until his arrest. He is engaged in a business selling Nigerian artefacts and foodstuffs on Ngong Road, which has been his main source of income. He has no previous criminal record, has cooperated with investigators, and is ready to comply with any bail conditions, including surrendering his passport and reporting regularly to a police station.
 7. In addition, he averred that there is no evidence to show he has interfered with witnesses. He maintained that his family moved to a smaller house because of reduced income after his arrest, and not because of threats. Furthermore, no official report existed to show that the Nigerian community is divided over his arrest. He explained that two prosecution witnesses who had made allegations against him had been receiving his financial assistance, which stopped after his arrest.
 8. The application was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
 9. I have considered the application, the opposition, the response, and the applicable law.
 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 pre-bail report on record, indicated that the accused is a Nigerian national married to a Kenyan citizen and has one child. His wife and child reportedly relocated after threats linked to the case. He



- has sought release on Kshs. 500,000 cash bail, to be raised through friends, with his wife acting as the contact person.
13. The victim's family declined to participate in the interview by the probation officer. The victim's sister sought clarification from the court regarding the settlement of the victim's accrued medical bills and burial arrangements. The remainder of the victim's family was not interviewed, and their views on the bail application were therefore not obtained.
 14. It was noted that the Nigerian community in Nairobi is divided over the incident, with some members allegedly issuing threats to witnesses and the accused's family. One witness is said to have relocated for safety. The investigating team opposed bail on grounds of the accused's foreign nationality, lack of a fixed place of abode, absence of formal employment, and personal acquaintance with many of the witnesses, raising the risk of interference.
 15. The probation officer acknowledged the accused's ability to raise cash bail but, considering the seriousness of the charge, the prevailing community tensions, and the perceived threat to witnesses, recommended that bond be withheld, subject to review should circumstances change.
 16. The prosecution, through an affidavit opposing bond, asserted that the accused, who is a Nigerian citizen, is a foreigner and therefore poses a flight risk, as he may attempt to flee the jurisdiction of the court.
 17. In deciding whether this is a compelling reason, this court is guided by Article 49(1)(h) of *the Constitution*, the Bail/Bond Policy by the Judiciary, and decided cases.
 18. In the present application, the main concern of this court is whether the accused will attend court if he is released on bail pending trial. The fact that he is innocent until proven guilty by a court of competent jurisdiction is without doubt. In cases where the accused is a foreigner, the courts have come up with certain principles to be taken into further consideration in determining whether or not to release the accused on bail/bond pending trial. The cases this court has considered include Republic vs Kokonya Muhssin [2013] eKLR, Republic vs Dwight Sagaray & 4 Others [2013] eKLR, Republic vs Makoy Madhak Deer [2015] eKLR, and Republic v Richard David Alden [2016] eKLR.
 19. Being a foreigner per se is not an inhibiting consideration in determining whether or not the accused should be released on bail pending trial. Another factor is whether the accused has a fixed abode in Kenya and whether he has property or familial connections in Kenya. Another factor is the nature of the charge that the accused is facing and whether the likely sentence to be meted out may serve as an incentive or impetus for the accused to abscond from the jurisdiction of the court. In addition, the court should also consider the antecedent and subsequent conduct of the accused before and after being charged. The factors listed above are by no means exhaustive. Each case will depend on its facts and circumstances.
 20. The accused maintained that he has been a resident of Kenya for more than three years and has a Kenyan wife with whom they have one child. In addition, he has a fixed abode in Lower Kabete where he resides with his family. Although the prosecution maintained that he did not have a fixed abode, the probation report, however, found that he resided in Tsavo Skywalk Apartments, where the alleged offence took place, while his family resided in Castle Rock Gardens, Galana Road.
 21. In my view, this is indeed sufficient demonstration that the accused has a fixed abode with familial ties in the country. The prosecution did not supply cogent and credible evidence to support the contention that the accused lacked a fixed abode and was a flight risk by being a foreigner. It was shown that he has a fixed abode and family ties in the country.



22. The second ground advanced by the prosecution is the possibility of interference with witnesses. The issue of interference with witnesses is underscored by the prosecution's evidence that several key witnesses, including friends and former neighbours of the accused, remain within his social and geographical proximity. This creates a real risk of direct or indirect contact before they testify, which may compromise their credibility. The concern is reinforced by the pre-bail report, which records that one witness has already relocated for safety. Such circumstances amount to more than speculative apprehension and, under the Bail and Bond Policy Guidelines, constitute a recognised ground for restricting bail.
23. On community hostility, the pre-bail report confirms that the Nigerian community in Nairobi is divided over the incident, with some members allegedly issuing threats to both witnesses and the accused's family. It further notes that the accused's wife and child relocated following threats linked to the case.
24. The accused attempted to explain away the issues raised in the pre-bail report, citing a stable residence, community involvement, and absence of threats. However, the report, taken as a whole, is persuasive and supports the prosecution's contention. It confirms that the Nigerian community in Nairobi is divided over the incident, with threats made to witnesses and the accused's family, leading to the relocation of his wife, child, and one witness.
25. Combined with the risk of interference arising from the accused's close acquaintance with several witnesses, these circumstances present compelling reasons under the Bail and Bond Policy Guidelines.
26. In light of Article 49(1)(h) of *the Constitution*, the court must balance the accused's right to liberty with the safety of witnesses, the preservation of public peace, and the integrity of the trial process. Where credible evidence demonstrates continuing community tension and realistic prospects of interference, these constitute compelling reasons to deny bail.
27. The court is therefore satisfied that, given the current public interest concerns and unsettled community hostilities, the application for bail cannot be allowed at this stage.
28. Accordingly, the accused's application for bail is dismissed.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 14TH DAY OF AUGUST 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the Prosecution

Mr. Wachira for the Accused

Maureen Court Assistant.

