



**Shighali alias Imo & 2 others v Republic (Criminal Case
E006 of 2025) [2025] KEHC 11930 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E006 OF 2025
DR KAVEDZA, J
AUGUST 14, 2025**

BETWEEN

WILLIAM IMOLI SHIGHALI ALIAS IMO 1ST APPLICANT

EDWIN ODUOR ODHIAMBO ALIAS MACHUANI 2ND APPLICANT

EBEL OCHIENG ALIAS DAVE CALO 3RD APPLICANT

AND

REPUBLIC PROSECUTOR

RULING

1. The accused persons are jointly charged with murder contrary to section 203 as read with section 204 of the *Penal Code*, Cap 63 Laws of Kenya. The particulars of the offence, as per the information, are that on the night of 30th April 2025, at about 7:45 pm, at the City Mortuary Roundabout along Ngong Road in Kilimani Sub-county, within Nairobi County, the applicants, jointly with others not before this Court, murdered Charles Ong'ondo Were.
2. Immediately thereafter, Mr Swaka, learned counsel on record for the first and second accused, and Mr. Kangahi, learned counsel for the third accused, applied for bail pending hearing.
3. The Investigating Officer, No. 24xxxx IP Oliver Nabonwe, swore an affidavit dated 16th June 2025 opposing the grant of bail. He deponed that the gravity of the offence constituted a compelling reason under the *Bail and Bond Policy Guidelines* to justify its denial. He further stated that each accused person was a flight risk, given the possibility of a death sentence upon conviction. He averred that there existed a likelihood of interference with witnesses, noting that the witnesses were closely connected to the accused persons. In respect of the third accused, he stated that immediately after the incident, he disposed of his mobile phone and fled to Nakuru. The officer also referred to the threats uttered in open court and urged that, in the interest of public safety, the bail application be declined.



4. Mr. Swaka for the first and second accused made oral submissions and argued that the purpose of bail is to secure attendance at trial, not to punish or undermine the presumption of innocence. He denied claims that his clients were flight risks, citing their cooperation during arrest. He challenged the investigating officer's affidavit for lacking evidential and legal basis. He maintained that hat no witness had sworn an affidavit alleging intimidation. He cited the case of *Republic v John Kabindi Karisa & 2 others* [2010] KEHC 77 (KLR) in support of his position. He urged the Court to balance the rights of the accused persons and the state and grant bail on reasonable terms.
5. Mr. Kangahi learned counsel for the third accused submitted that the seriousness of the offence and potential death penalty were not sufficient reasons to deny bail under Article 49(1)(h) of the *Constitution*. He cited the case of *Republic v Danson Mgunya & another* [2010] eKLR in support of his submission. He contended that the prosecution had not shown any specific acts indicating intent to abscond. He affirmed his client's willingness to comply with any conditions imposed by the Court. Ms. Ndichu adopted these submissions.
6. Ms. Onunga, learned prosecution counsel, submitted that there were compelling reasons to deny the accused persons bail. She contended that the offence charged was grave, that there existed a real risk of interference with witnesses, and that the accused were flight risks. It was her submission that the accused acted jointly in the commission of the offence; that the murder weapon was recovered from the residence of the second accused; that mobile phones allegedly used in the coordination of the offence were seized; and that the killing was executed in a brutal manner.
7. She further submitted that certain key prosecution witnesses, being friends and relatives of the accused persons, had expressed fear for their safety and were under the protection of the Witness Protection Agency. She pointed to threats issued in open court as indicative of the danger to witnesses if bail was to be granted. In support of her position, she relied on the cases of *Republic v Bernard Karisa Maita & another* [2014] eKLR and *Republic v Kariuki Mwaniki* [2016] eKLR.
8. Learned Counsel maintained that the gravity of the offence, the manner of its execution, and the surrounding circumstances satisfied the threshold of "compelling reasons" under Article 49(1)(h) of the *Constitution*. She urged the court to find that the safety of witnesses, the integrity of the trial process, and the likelihood of the accused persons absconding outweighed their right to liberty at this stage of the proceedings.
9. This court called for a pre-bail report for each of the accused persons.
10. The pre-bail report indicated that the first accused was a flight risk, having no fixed abode. The victims expressed fear for their safety, and public safety was deemed at risk due to his alleged membership in a gang known as "Kabreeze." It was further stated that members of the public had previously attempted to set fire to his family home, prompting him to flee.
11. The report described the second accused as a habitual user of bhang, alcohol, and khat, which could impair his attendance in court. Residents of Kasipul Constituency, many of whom had benefited from the deceased's support, opposed his release, and his community expressed fear of him owing to his alleged prior incarceration and claimed association with an antisocial group. The report recommended that bail be considered only at a later stage.
12. With regard to the third accused, the report stated that he was likely to interfere with witnesses while investigations were ongoing, was a flight risk, and faced hostility from his community. It was further stated that the deceased's brother, Paul Were, had reported receiving threats from the accused's brother. The recommendation was that bail consideration be deferred.



13. In rebuttal to the pre-bail reports, each accused person filed an affidavit sworn on 23rd July 2025. They averred that the pre-bail reports relied upon information supplied by a police officer who was related to the deceased, thereby giving rise to a conflict of interest. They disputed the assertion that unfamiliarity with their rural homes was indicative of a likelihood to abscond. They denied membership in the alleged "Kabreeze" gang, asserting that it was a registered welfare group. They further contended that the pre-bail reports presented a one-sided account that did not accurately or fully reflect their circumstances or character.
14. Having considered the application, the responses, the arguments for and against the grant of bail, the issues for determination are:
 - a. Whether the prosecution has established sufficient compelling reasons to warrant limiting the accused persons' constitutional right to bail.
 - b. Whether, in light of the findings under (a), the accused persons should be granted bail pending trial.

(a) Whether the Prosecution Has Established Sufficient Compelling Reasons to Warrant Limiting the Accused Persons' Right to Bail

15. Article 49(1)(h) of the Constitution provides that an arrested person has the right

“to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

Section 123A of the Criminal Procedure Code (Cap. 75, Laws of Kenya) codifies the statutory framework for determining such compelling reasons. It provides thus:

“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 fulfillment 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.



16. Further, in the case of *R v Pascal Ochieng Lawrence* [2014] eKLR, the Court outlined key considerations in the determination of an application for bail pending trial as follows:

“It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the state. The court, in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters: The seriousness of the offence although this carried greater weight under the old constitutional dispensation. Weight of the evidence so far adduced if the case is partly heard. Possibility of the accused interfering with witnesses. Safety and protection of the accused once he is released on bail/bond. Whether the accused will turn up for trial. Whether the release of accused will jeopardize the security of the community.”

17. The *Bail and Bond Policy Guidelines* further direct that the prosecution must satisfy the Court, on a balance of probabilities, of the existence of compelling reasons. Such reasons include the likelihood of absconding, interference with witnesses, danger to victims or the public, endangerment of national security, or the public interest in pre-trial detention.

Seriousness of the Offence Charged.

18. The prosecution argued that the offence of murder, which attracts the death penalty upon conviction, creates a strong incentive for the accused persons to abscond if released. The accused persons face allegations of killing a sitting Member of Parliament in a calculated and brutal manner. The severity of the offence, coupled with the political profile of the deceased, makes the risk of absconding a realistic and significant concern. The court must also acknowledge that the potential penalty for murder, being death, heightens the incentive for an accused person to abscond if released on bail.

19. While the right to bail is a constitutional guarantee under Article 49(1)(h) of the *Constitution*, it is not absolute. The Court is enjoined to consider the nature of the offence and its attendant circumstances. In the case of *Republic v Ahmed Mohammed Omar & 6 Others* 2010 eKLR, Ochieng, J. stated that:

“... whereas the applicant is still presumed innocent; if he were to be convicted for murder, there is a possibility that the trial court could sentence him to death. To my mind, therefore, the severity of the sentence remains a significant factor for consideration in an application for bail pending trial.”

20. In a ruling from the Supreme Court of Malawi, in the case of *John Zenus Ungapake Tembo & 2 Others v The Director of Public Prosecutions*, MSCA Cr. Appeal No. 16 of 1995, the court discussed the consideration of whether an accused person may be tempted to avoid trial once bond is granted, and observed thus:

“Fear is a natural instinct in human beings, so that generally speaking, the more serious the Offence, a capital offence, for example, and the sentence it may call for upon conviction, the greater the likelihood that the Accused person would be disposed to abscond.”

21. Whereas the ground advanced by the State is an important one, it cannot however be relied upon by this Court in isolation, unless, there are other grounds to demonstrate that the accused persons may be inclined to abscond in order to escape punishment. This ground, in my view, is not sufficient on its own, and needs to be considered alongside other factors to form a complete, reliable picture to warrant denial of bail. The *Constitution* guarantees the enjoyment of bail by all accused persons,



notwithstanding the offence they face and the punishment they may face if convicted. Thus, the right to bail/bond cannot not be curtailed without good cause.

Likelihood of Interference With Witnesses

22. The prosecution contends that the principal witnesses are relatives and close acquaintances of the accused persons. It is alleged that the witnesses have expressed apprehension for their safety and are presently under the protection of the Witness Protection Agency. Such placement is itself indicative of the seriousness of the threat perceived. The prosecution further alleges that threats were uttered in open court against certain witnesses, thus demonstrating both capacity and willingness on the part of the accused persons to interfere with the course of justice.
23. The court must examine these allegations not in isolation but in light of the surrounding circumstances. It is not in dispute that some of the accused persons and the witnesses share social ties, hence creating both opportunity and means of interference. Moreover, the gravity of the charge, coupled with the relationship between the parties, increases the likelihood of such interference, particularly where it has been deponed on oath that the offence was committed through an organised and coordinated manner.
24. The Court in *Republic v Dwight Sagaray & 4 others* [2013] KEHC 3824 (KLR) established the threshold to determine the veracity of this ground as follows;

“As I have held before, interference with prosecution witnesses is, in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the trial and is an affront to the administration of justice. For the prosecution to succeed in persuading the court on this criterion however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others.”
25. Similarly, this position was upheld in the case of *Republic v Joktan Mayende & 3 others* [2012] KEHC 5551 (KLR), where the Court opined thus;

“Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”
26. From the jurisprudence above, it is manifest that intimidation or undue influence upon witnesses may be exerted either directly or indirectly, and that physical or social proximity to such witnesses significantly magnifies the risk. This is not a theoretical proposition but a reality borne out by the conduct of the third accused person on 3rd June 2025. On the material date, and to the utter dismay of this Court as well as all persons present in the courtroom, the third accused audibly and deliberately uttered the words, “*Huyu ni nani mwenye hataki tuachiliwe*” and “*Huyu tutamuua,*” which, when translated, mean: “Who is this who does not want us to be released?” and “We shall kill him.” These statements were directed squarely at Mr. Mulama, learned Prosecution Counsel.



27. Such conduct is a brazen affront to the authority of the Court and the sanctity of judicial proceedings. The open issuance of death threats in a courtroom, a forum that ought to epitomise the rule of law and the protection of rights, is a most egregious manifestation of contempt for the judicial process. It reveals a calculated and malicious intent to instil fear and to potentially cause physical harm to any person perceived as standing in the way of the accused’s release or eventual acquittal. This is not mere posturing; it is an overt threat, made in a setting where its chilling effect could not be lost on witnesses, court officers, or the public.
28. The Investigating Officer has averred that the accused persons are members of a notorious criminal gang. The third accused made life-threatening utterances directed at a Prosecution Counsel. He uttered the words, ‘we shall kill him’ the scope of which remains unclear. Whether he was referring to his co-accused, members of the alleged ‘kabreeze’ gang, or some other persons is not for this court to speculate. What is material is that such threats, when viewed alongside the prosecution’s assertion of gang affiliation, create a serious and credible risk to the safety of the prosecution team and potential witnesses.
29. In light of the accused persons’ proximity to key witnesses, the credible threats made in the very precincts of the court, and the evident vulnerability of civilian witnesses, the risk of interference is neither remote nor speculative, it is both imminent and substantial. Having already stated that the seriousness of the offence should not be considered in isolation of other factors, when considered alongside these factors, present a compelling reason for denial of bail.
30. Guided by binding precedent, the Court is satisfied that this risk constitutes a compelling reason to deny bail. The Court is further persuaded that no conceivable bail terms or conditions could sufficiently mitigate such a risk, and that the safety of witnesses and the integrity of the proceedings demand that bail be refused.

Public Interest.

31. The prosecution submitted that the release of the accused persons from custody would be detrimental to public safety. In determining whether to grant bail, the court is obliged to consider not only the constitutional guarantee of the right to liberty but also the imperative to protect public interest and safety. Article 49(1)(h) of the *Constitution* recognises the right to bail but qualifies it by allowing denial where compelling reasons exist. This must be read together with Article 29, which guarantees the right to freedom and security of the person, and Article 24, which permits limitation of rights, provided that such limitation is reasonable and justifiable in an open and democratic society. Clearly, the right to bail/bond is not absolute.
32. “Public interest” is defined in *Black’s Law Dictionary*, 9th Edition, page 1350, as
“the general welfare of the public that warrants recognition and protection”
or
“something in which the public as a whole has a stake, especially an interest that justifies governmental regulation.”
33. In *Stroud’s Judicial Dictionary*, Volume 4 (IV Edition), it is defined as:
“a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community



have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

34. The “public” in this case refers to the constituents of Kasipul Constituency, where the deceased, a sitting Member of Parliament, enjoyed significant support, having secured a majority of votes in the last election.
35. Article 159 of the Constitution affirms that judicial authority is derived from the people. The court is therefore duty-bound to balance the interests of the public vis a vis the rights of the accused persons.
36. The prosecution contends that the accused are members of the so-called “Kabreeze” gang, a group reputed for violence and intimidation. Whether or not this is ultimately proven at the trial, the fear it generates in the community is material to this court’s assessment. Granting bail to individuals perceived to be part of an organised criminal network could aggravate community tensions, expose potential witnesses to retaliation, and undermine the public’s sense of safety.
37. This position was aptly expounded by the Constitutional Court of South Africa in Sv Dlamini (CCT 21/98):

“It would be irresponsible to ignore the harsh reality of the society in which the Constitution is to operate. Crime is a serious national concern, and a worrying feature for some time has been public eruptions of violence related to court proceedings... The ugly fact remains, however, that public peace and security are at times endangered by the release of persons charged with offences that incite public outrage.”
38. The Court is conscious of the current social and political circumstances prevailing in the country. The by-election in Kasipul Constituency is yet to be conducted, thus leaving the constituents without representation in the National Assembly. It is barely three months since the unlawful killing of the deceased. The grief, the anger, and shock remain palpable. The deceased was not only a sitting Member of Parliament but a prominent public figure, and his killing in broad daylight on a public road is an extraordinary and troubling occurrence in our democratic society. Such an incident, committed in a vicious manner, has drawn intense national attention and scrutiny. Courts are not isolated entities; they are influenced by societal values, norms and changes, and in turn, their decisions and interpretation of the law impacts the society. The releasing of those charged with the offence of killing the Member of Parliament for Kasipul at this juncture not only risks provoking significant public outrage, but, may also undermine confidence in the criminal justice system, thereby creating a perception of judicial detachment and indifference to the gravity of the offence.
39. The Supreme Court in Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR recognised that perceived threats to public safety may justify denial of bail even before proof at trial. Applying the proportionality test under Article 24, this court is satisfied that continued detention is reasonable and justifiable. The combination of alleged gang affiliation, the political sensitivities surrounding the killing, and the prevailing risk to public safety constitutes compelling reasons for denial of bail. Less restrictive measures, such as stringent bond terms, would not adequately address the risk of witness intimidation, community unrest, and erosion of public trust.
40. In addition, the court has observed the demeanour of the accused persons from their arraignment, noting their impatience, audible sighs, and gasps whenever a decision is made to remand them. It also demonstrates a lack of composure expected of persons facing such grave charges, where the administration of justice demands patience, respect, and restraint. The wheels of justice inevitably take



time to turn, and an accused person's demeanour is a relevant consideration when assessing whether they are likely to comply with court orders and respect the process if released.

Whether, in Light of the Findings Under (a), the Accused Persons Should Be Granted Bail Pending Trial.

41. The accused persons have challenged the credibility and impartiality of the pre-bail reports, asserting that they are based on information provided by a police officer related to the deceased, and that the "Kabreeze" group referred to is a lawful welfare association. They have further denied any intention or capacity to abscond, and have given explanations in rebuttal of the alleged risk factors.
42. The court must weigh the constitutional presumption of innocence and the right to liberty against the need to secure the attendance of the accused persons at trial and protect the administration of justice. At the risk of repetition, the allegations of threats to prosecution witnesses, coupled with the vulnerability of the witnesses under the witness protection program, cannot be taken lightly. In this instance, the nature of the allegations, the vulnerability of the protected witnesses, and the risk likely to be posed to the integrity of the trial, all constitute compelling reasons within the meaning of Article 49(1)(h).
43. Taking into account the totality of the foregoing analysis, this Court is satisfied that the prosecution has established compelling reasons to warrant denial of bail pending trial.
44. Accordingly, the application for bail is hereby dismissed.

Orders accordingly.

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

D. KAVEDZA

JUDGE

In the presence of:

Ms. Gichui Gikui & Mr. Owiti for the Prosecution

Ms. Kamau h/b for Swaka for the 1st and 2nd Accused

Ms. Mwendu for the 3rd Accused

Mr. Apollo Mboya for the Victims.

Maureen Court Assistant.

