



**Republic v Gitonga (Criminal Case E025 of 2024)
[2025] KEHC 12035 (KLR) (Crim) (12 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E025 OF 2024
MW MUIGAI, J
AUGUST 12, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LAWRENCE NDEGEA GITONGA ACCUSED

RULING

Background

1. By the 1st Ruling of 18th day of July 2024 the Hon. Judge Kanyi Kimondo PJ on bail and bond ordered as follows:-
 1. I have considered that the homicide occurred a few months ago. The Director of Public Prosecutions informs the High Court that on 2nd March, 2024 at White House Apartments, Thome Area, Kasarani Sub-County within Nairobi County he murdered the deceased.
 2. When I weigh the gravity of this charge, the stage of the trial, I cannot state with any confidence that the accused will not abscond. Secondly, the accused used to reside around the locus in quo. A key witness said to be the proprietor of the subject apartments, and who as in contact with the accused, has expressed fears over her life. A mere relocation order would not adequately secure the witness or her evidence.
 3. The upshot is that there remain strong and compelling reasons for denial of bail. I accordingly decline to grant bail at this stage. However, in the interests of justice, I direct that that this trial shall be fast-tracked. It is so ordered.



4. The 2nd Ruling by this Court on 17/2/2025 regarding grant of bail and bond found as follows in part;

A review of these orders due to new developments can only be applied in light of all circumstances surrounding the case. The nature of the case is serious, whereas the Accused person may or may not be a flight risk, there is need to protect a particular witness named in the Investigation Officer's Affidavit dated on 8/5/2024, who reportedly feared for his/her life and review of bond was granted upon expediting the hearing and have the protected witness(es) testify first. That has not happened yet and no explanation has been given on any challenge to expedite hearing of the matter.....

5. The Application for review of bail and/or bond is denied at this stage owing to the safety and security of witness who ought to testify first. Secondly, correspondence between ODPP and DCI on authenticity of medical documents as presented to Court, was not availed to confirm the same and the Court to rely on these medical documents.

Present Application

Information

2. The accused person Lawrence Ndegea Gitonga is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap.63 Laws of Kenya.
3. Particulars of the offence being that on the 2nd March, 2024 at White House Apartments Thome Area with Kasarani Sub County, Nairobi County within the Republic of Kenya murdered Juanita Mbulwa Nzomo.

Certificate Of Urgency Filed On 18/10/2024

4. On 16th October 2024 Lincoln Waicigo Kamau advocate for the accused person filed a Certificate of Urgency on behalf of the accused person as follows:-
5. Application on behalf of the accused person/applicant herein do certify the instant application to be of utmost urgency and one that merits to be placed before the duty Judge on priority basis on grounds that the accused person/applicant has been in custody since 7th March, 2024 when he was arrested and his previous request to be admitted on bond was declined by the court through a ruling delivered on 18th July, 2024. However, there has been discovery of new issues which affect the life of the accused person to exact, the applicant's wife gave birth immediately the accused person was arrested and suffered from a condition after birth and was diagnosed with a mental condition and that the liberty of the accused person will help in bringing up the minor who is now in need of care and protection of the parents. Similarly, the minor's health condition is at stake having been diagnosed with Convulsive disorder and it is indeed an affirmation healthcare of the family lies on the Applicant as the sole bread winner. The Applicant undertakes to abide by the condition this court will impose on him and is willing to deposit his travel documents and appear in court from time to time.

Notice Of Motion

6. On 18th October, 2024 the Accused person filed a Notice of Motion dated 16th October, 2024 seeking the following orders.
 1. The matter be certified as urgent and service thereof be dispensed with in the first instance



2. The court be review /alter the bond terms and admit the accused person to bail pending hearing and determination of the case.
 3. The court to issue other orders and directions it deems fit in the circumstances.
 4. The costs of the application be in the cause.
7. Grounds Of Application
- a) The accused person has been in custody since the time of arrest in March 2024,
 - b) The court in its ruling, declined to admit the accused person on bail pending hearing.
 - c) That there is discovery of new factors/evidence that have effects.
 - d) The accused person is the sole breadwinner of his young family.
 - e) It has come to the attention of the accused person/applicant that the health of his son and that of his wife are at stake as they have been diagnosed with several ailments and require medical attention.
 - f) That the accused person's wife has been subjected to mental anguish and has been diagnosed with Postpartum Psychosis and the minor has also been diagnosed with and both require the applicant's presence and support.
 - g) That the accused person prior to his arrest was running a company and it is at a risk of collapsing hence financial loss.
 - h) That the father to the accused is willing to house him at home in Nanyuki and stand as a surety upon grant of bail pending hearing and determination of this suit.
 - i) The accused person undertakes not contact the witnesses, whether by himself or by proxies.
 - j) The accused person undertakes not to ever visit the scene of crime or ever step close to Kasarani area until hearing and determination of this case.
 - k) If the orders sought are not granted, the Accused person stands to suffer irreparable damage and harm both in regard to his physical and physical and psychological aspects of his life, not to mention the violation of his Human and Constitutional rights.
8. Supporting Affidavit Of Lawrence Ndegea Gitonga Dated 16th October 2024
1. That I am charged with the offence of Murder contrary to sections 203 as read together with 204 of the Penal Code.
 2. That I am advised by my advocates on record whose advice I verily believe to be true that all the accused persons have a right to bail pending hearing unless there are exceptional circumstances that warrant denial of bond.
 3. That I was arrested around 7th March 2024 and charged before the court with the said offences
 4. That all that period I have been in custody pending hearing of the case.
 5. That previously I applied for bail pending hearing of the case and the same was declined by court in a ruling delivered on 18 July 2024.
 6. That in the said ruling the court indicated that I am likely to interfere with the potential witnesses and that I am a flight risk,



7. That I am the sole breadwinner of the young family
 8. That I am aware that the court decision is final and unless varied and or set aside which I hereby do
 9. That there are some changes in circumstances subject matter of this case and they now warrant me to make an application for review of Bond terms before this court.
 10. That I am married to one Ruth Tana whom we have been blessed with one issue abbreviated as K.G. N who was born after my arrest.
 11. That in the course of my arrest, it has come to my attention that the mother of our child, my wife has been diagnosed with Postpartum Psychosis and requires medical attention (Annexed herein and marked LNG-1 is a copy of medical report.
 12. That there she has also been subjected to mental anguish out of my incarceration and has diagnosed with a Major Depressive Disorder due to the major situations she continues to undergo (Annexed herein and marked LNG-2 is a copy of the Medical report from Mathari Hospital)
 13. That the above scenario needs my presence to take care of my son and my ailing wife at this time of need.
 14. That on the previous position of this court that I am likely to interfere with witnesses I wish to state that I undertake not to set foot around Kasarani where the crime is said to have occurred and I further undertake to avoid contacting the witnesses, whether by self or proxies.
 15. That prior to my arrest I was carrying out a business and I had employed around 40 individuals and the business might go down due to my continued incarceration and I beseech this court to admit me to bail pending appeal.
 16. That further on the issue of place of abode we have had a discussion with my family and my father one David Gitunga Ndegea hat grows that I return back by our ancestral home in Nanyuki to be my place of abode.
 17. That in addition to the above, my father and my sister Esther Wangari Gitonga are willing to stand as surety and ensure that I attend court whenever required.
 18. That further I acknowledge that I am a holder of a Travel passport and I undertake to deposit it in this court and never to leave the country until the case is heard and determined.
 19. That I am advised by my advocates on record whose advise I verily believe in be true and sound that this court has powers to vary, review or set aside the orders issued on discovery of new circumstances.
 20. That the court equally has powers so make orders and directions for the interest of the accused person and the aggrieved party in the interest of justice.
 21. That no prejudice will be occasioned to the prosecution if the orders are granted.
 22. That I swear this affidavit in support of my application for review of bond rooms.
9. Supporting Affidavit By Esther Wangari Gitonga Dated 16th February 2024
1. That the accused person was arrested in March 2024 and has been remanded at Industrial area prison.



2. That on 18 July 2024, the accused person was denied bond on grounds that he is a flight risk and has potentiality of contacting witnesses,
 3. That the accused is married one Ruth Tana and have one issue who was born upon the arrest of my brother.
 4. That the arrest of her husband has seen the wife subjected to a Major Depressive Disorder and is undergoing a medical process.
 5. That the minor was also born with a condition that requires medical attention from time to time.
 6. That the child being of tender years and the father being away from the home is a complex scenario and the presence of the father would mitigate the problems that would arise.
 7. That the accused person was denied bond on grounds of being a flight risk, likelihood of contacting witnesses and not having a place of abode.
 8. As a family they have agreed that the accused relocates to their home in Nanyuki under their parent's watch.
 9. That their father and her are willing to stand in as contact persons for the accused person.
 10. That the discovery of new factors such as health and welfare of the accused family is a sufficient ground to vary or alter the bail terms.
10. Further Affidavit By Esther Wangari Gitonga Of 12/11/2024 And Filed In Court On 4/2/2025
1. That she is a sister to the accused person/applicant herein conversant with issues pertaining this application hence competent to swear this affidavit and state as follows.
 2. That she is a female adult of sound mind, and a sister to the accused person (Annexed herein marked EWG-1 is a copy of my national Identity card)
 3. That she wish to confirm that David Gitonga Ndegea is his father.
 4. That upon the arrest of her brother, his wife Ruth Tana whom they were married customarily was blessed with a Baby boy Keown Gacheru and she have been in custody of birth certificate (Annexed herein and marked EWG-2 a copy of Birth Certificate)
 5. That she reiterates her desire to stand surety for him.
11. Supporting Affidavit By David Gitonga Ndegea Dated 16th October 20204
1. That he confirms the accused person is his fourth born son.
 2. That the accused has been in custody since march 2024 and his previous application for bond was declined by the court on a number of grounds.
 3. That as a family they have been having a number of challenges especially in his family where his wife has been diagnosed with Major Depressive Disorder and his son who is around 7 months is having a condition and all this require the attention of the applicant



4. That he is willing to host the accused person at his home in Nanyuki Laikipia County on Land Reference Number Laikipia/Daiga Umande Block 6/359 (nyariginu) and he is willing to be a contact person and avail him whenever required in court.
 5. That the applicant has also been explained to by his advocate on record the conducts expected of an accused person upon release on bail an undertakes to conduct himself appropriately once released,
 6. That issue about the accused wife's and son's health have been discovered recently and are a ground for review of bond terms since they fall within the realm of discovery new grounds.
12. Further Affidavit By David Gitonga Ndegea Dated 12th November 2024 And Filed In Court On 4th February 2025
1. That he is a male adult of sound mind, conversant with issues pertaining this application hence competent to swear this affidavit and state as follows.
 2. That further to his affidavit sworn on 16 October 2024,
he wish to file a further affidavit stating that he is also the Holder of National identity card Number 0252158 Annexed herein and marked DGN-1 is a copy of the National identity card.
 3. That he is the registered owner of land reference Number Laikipia/Daiga Umande Block 6/359 Nyariginu and he will be hosting the accused person on the land upon release on bond Annexed herein and marked DGN-2 is a copy of the Title deed
 4. That this affidavit is in further support of his application for review of bond terms.

Medical Report

13. A medical report dated 4/10/2024 from Pemason Medical Centre for Ruth Tana aged 31 years was filed on follow-up of post-partum psychosis plus post partum depression.

Accused Person/applicants Written

Submissions Dated 7th February 2025

14. On 12th February 2025 the accused person filed written submissions dated 7th February, 2025 seeking orders of this court reviewing bond terms and admit the accused person on bail/bond pending hearing and determination of the instant case.

The Applicant's Case

15. The applicant's case is founded on the grounds on the face of the application and the supporting affidavits of LAWRENCE NDEGEA GITONGA, ESTHER WANGARI and DAVID GITONGA It is clear from the aforesaid that the accused person has been in custody since the time of arrest having been denied bond by the trial court upon taking plea. The applicant contends and it has been change in circumstances to wit health of the enhanced in the subsequent affidavits that there is accused person's wife and son necessitating review if the bond terms so as the accused person can be present and offer the relevant support to the family. Further, from the affidavits mentioned, the family of the accused is willing to come to the aid of this court upon grant of bond and willing to host him at the family home in Nanyuki. There is an express undertaking by the accused person/applicant not to step in Kasarani where the alleged act occurred, not to contact witnesses directly or through proxies and the father and the sister are willing to be contact persons or sureties. It is affirmed in the affidavit of ESTHER



WANGARI that the accused person wife has been diagnosed with Major Depressive Disorder as per the annexed report.

The Respondent's Case

16. After Ruling delivered on 17/2/2025 by letter dated 26/2/2025 the Senior Assistant Director of Public Prosecution confirmed that on 5/2/2025 the ODPP did not object to grant of bail and bond. However, this Court awaited confirmation on the authenticity of the provided medical documents that at the time was not forthcoming. It was also clarified that the State was to confirm verification of the annexed documents through the Investigating Officer who now confirmed authenticity and the court was/is at liberty to review bond terms.

Issues For Determination

17. We submit that the application raises the following issues for determination by this court.
1. When should bail/bond terms be reviewed and or varied
 2. Has the applicant established the threshold for variance of review of bond terms.
 3. What orders should the court grant in the circumstances?

Law And Evidence

18. We submit that it is a trite law that whoever desires a remedy of court based on existence of circumstances bear the burden of proof. This is a provision of section 107-109 of the [Evidence Act](#). Existence or rather presence of exceptional circumstances with sufficient reasons is the yardstick for review of bond terms. It is imperative to submit that the application for review of bond terms should as a matter of procedure be made before the trial court at the very first instance, Justice Lesiit in *Harish Mawjee & another v Republic* [2020] eKLR established that, an accused has right to seek review of bond terms from trial court or high court or appeal. The issue is when can accused can enjoy bail review?
19. Section 124 of the Criminal Procedure Code provides as follows:
- “Before a person is released bail or on his own recognizance, a bond for such sum the court or police officer thinks sufficient shall be executed by that person, and, when he is released on bail, by one or more sufficient sureties, conditioned that the person shall attend at the time and place mentioned in the bond and shall continue so to attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officers.”
20. The power of the court to review bond and bail terms is discretionary and should be exercised judiciously and in consideration of sound factors. In *Victor Kiprono Ngeno v Office of the Director of Public Prosecutions* [2021] KLR the court stated judicial discretion is exercised judiciously. The Judiciary Bail and Bond Policy Guidelines of 2015 have provided parameters to assist the court in exercising discretion judiciously. With respect to bail and bond, they require that the court in granting bail should consider the seriousness of the offence, the strength of the case, interference of witnesses, failure of the accused to attend or where the accused is charged with another case, the need to protect the victim (9), the security and safety of the accused, the likelihood of absconding from the jurisdiction of the court and other factors which must be weighed by the court in the interest of justice, Such an exercise of discretion requires a holistic approach and the court must, in close circumspection, take to account the circumstances of the case and the accused person individually. We submit that



consideration of the above factors tilts in favor of the applicant and the court should review the bond terms.

21. The application is based on change in circumstances to wit health of the accused person's wife and son's health giving rise to a need for his presence and the accused persons family commitment to ensure that he shall attend court whenever required and his own undertaking to conduct himself as required of an accused person. This are circumstances that arose after the initial application was made and a ruling delivered making a review of bond terms the tenable remedy. It is notable that the application is unopposed.
22. The application having met the set threshold in law and having been made in the trial court in the first instance, and the prosecution having conceded to the same, grant of the same being founded on discretionary remedy and grant of bond terms being a constitutional right unless there are exceptional circumstances which are conspicuously absent in the instant application we submit that the applicant has satisfied the court to the required standard and urge the court to review bond terms. In light of the above submissions and authorities cited, we urge this court to allow the application as prayed.

Analysis And Determination

23. The Court considered pleadings and submissions by parties with regard to renewed application for bail and bond of the Accused person. The Court notes that these pleadings and submissions were in relation and culminated to the Ruling of 17/2/2025. In a nutshell, this Court in reliance of the 1st Ruling of 18/7/2024 denied bail and bond vide 2nd Ruling of 17/2/2025 due to the fact of non-compliance as follows;
 - a. The key witness said to be proprietor of the subject apartments and who was in contact with the Accused person expressed fear for her life and hence bail and bond was withheld to avail her evidence as a matter of priority
 - b. The Hearing was to be fast tracked, as at 17/2/2025, the matter had not started contrary to orders the matter is fast tracked
24. However, the Court record confirms that the hearing commenced on 16/7/2025 with evidence of PW1, PW2 & PW3. On 17/7/2025 evidence of PW4 & PW5 was presented and the matter scheduled on 30/7/2025 for hearing of the vulnerable witness.
25. On 30/7/2025 detailed oral submissions were made to Court by Mr Ogado and Mr. Mathenge for the Accused person and Ms Tum for ODPP/State on availability of the vulnerable witness and renewal of bail and bond application for the Accused person.
26. Mr Ogado submitted that after hearing of 5 witnesses the hearing was fast tracked and vulnerable witnesses have testified and there was/is a change of circumstances to warrant renewal of application for review of bail and bond terms for the Accused person. Reference was made to the case of Republic vs Paul Wanaina & 5 Others by Hon. Korir J(as he then was) on expedition of hearing and protecting vulnerable witnesses.
27. Ms Tum for ODPP submitted that with regard to bail and bond terms application for review, there has been no change of circumstances. The 2 Rulings, 1 by Presiding judge and the other by this Court have not been complied with. There are witnesses who were to testify and are vulnerable and it is for the State/ODPP to decide /determine the witnesses to be called after contacting the Investigation Officer. The crucial witness was bonded by the I/O to appear in Court and she did not inform the I/O why she was not in Court to testify on the matter. The ODPP already presented 5 witnesses in Court and therefore should be granted another opportunity to avail the witness.



28. Mr Ogado objected to the application for adjournment as a basis to oppose bail and bond application by the Applicant. The Applicant relied on Art 49 & Art 50 of *the Constitution*.
29. Ms Tum sought earliest date in the New Term and sought Court Summons to avail the witness.
30. The Court must balance the legal mandate of legal institutions of investigation and prosecution with the rights of citizens within the Justice process as both processes are protected by *the Constitution* 2010.
31. In this instant, the ODPP has made great strides to fast track the hearing; 5 witness were heard in a month. However, the crucial vulnerable witness has not testified and yet she was bonded was bonded. On 30/7/2025, the ODPP confirmed bonding, the I/O was present in Court but the witness did not attend Court physical or online or communicate with/to the Investigation Officer and/or ODPP. In the absence of any explanation, circumstance, situation, challenge or reason(s) advanced to the Court to consider and even where her life is in danger rely the message so as to enable the Court employ protection as provided by Victims Protection Act and/or *Witness Protection Act*.
32. The Court cannot withhold reasonably and logically the grant bail and bond terms of the Accused person who has been in custody all the while in compliance of Court Rulings and in the absence of the vulnerable witness's information or attendance indefinitely.
33. The Applicant has also presented medical documents of immediate family wife and mother of newborn child are incapacitated and medical documents attached are not challenged. The Court is to protect all parties rights and maintain law and order in the justice process.
34. The Accused person's right to bail and bond is outlined by Art 49 & 50 Constitution but subject to compelling reasons by the Prosecution.
35. The Prosecution ODPP has the burden of proving that there are compelling reasons to deny release on bail/bond. To deny bail/bond the Prosecution ODPP must provide cogent evidence and not mere allegations, the claim ought to be substantiated. Compelling reasons may include failure to attend court Commit or abet commission of a serious offence; seriousness of the offence or endanger the safety of victims, individuals or the public or interfere with witnesses or evidence.
36. From the record, the ODPP on 5/2/2025 and vide letter dated 26/2/2025 have not objected to grant of bail/bond or raised compelling reasons to oppose bail/bond. For these reasons the Court grants bail bond on the following terms.

Disposition

1. The Applicant /Accused person is granted bail/bond of Ksh 800,000/- with 2 sureties of Ksh 400,000/- each of cash bail Ksh 500,000/-
2. The Accused person shall deposit Passport with the Deputy Registrar Criminal Division forthwith
3. The Accused person shall report to OCS/I/O every alternative Monday until completion of Trial
4. The Accused person shall not interfere with investigations/evidence or contact hinder witnesses especially the vulnerable crucial witness.
5. The ODPP to give details of the Witness to the Deputy Registrar Criminal Division for Court Summons to be issued and served on the said witness before hearing on 18/9/2025 by Court



Bailiff /Process Server in Milimani Court Building. In default of appearance attendance or any reasonable circumstances explained to Court Warrant of Arrest shall issue forthwith.

6. The Applicant/Accused person shall not visit the said establishment until hearing and determination of the matter.
7. Hearing on 18/9/2025

**RULING DELIVERED DATED & SIGNED IN OPEN COURT ON 12/8/2025 ONLINE
CRIMINAL DIVISION HIGH COURT MILIMANI.**

M.W. MUIGAI

JUDGE

