



REPUBLIC OF KENYA



**KENYA LAW**

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**Republic v Githahu (Criminal Case 9 of 2015) [2025] KEHC 11571 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11571 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A**

**CRIMINAL CASE 9 OF 2015**

**TW OUYA, J**

**JULY 31, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MATTHEW MWANGI GITHAHU ..... 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 has been in police custody pending trial. So far, five (5) witnesses have testified.
2. The initial application was for bail pending trial Justice Kanyi Kimondo made by the accused persons on 3rd July 2018. At the material time, pre-bail report was filed in respect of the accused person and the prosecution opposed the release of the accused person on bail. The judge noted that there were still security concerns at the time and that the concerns of the victim of the offence had not been taken into account. As a result, he denied the request for bail and ordered that the trial be fast-tracked in the interest of justice.
3. The judge noted that the victim was the accused's wife and that the witnesses would therefore be close relatives. The chances of witness compromise were therefore high. The judge also noted that at that time, there was still palpable anger in the loquus in quo which would endanger the safety of the accused. For the above reasons, the application for bond was denied.
4. The accused through his Counsel has renewed his application for bail/bond citing among others that the key witnesses who the prosecution feared would be compromised or threatened including the child witness have since testified.
5. The prosecution has made a rejoinder with an affidavit sworn by the investigating officer on 24th July 2025 whose essence is that the accused if released on bond may harm the child witness or cause further



trauma and emotional stress to her and that there is a high likelihood of the accused's flight due to the gravity of the offence

6. This matter was disposed of by way of oral submissions by counsel for either side. Counsel for the accused relied heavily on the pre bail report dated 3<sup>rd</sup> June 2025 which he argues is favourable to the accused. He also argues that the main reason for initially denying the accused bail was that key witnesses would have been compromised. That those witnesses have all testified and the risk is no longer there.
7. Counsel for the State opposes the application for bail and argues that the court should take into account the concerns raised in the affidavit alongside the history and circumstances of the incident of the murder which is the subject of this trial being that the accused had threatened to kill his wife the victim together with his daughter, the key witness and that he actualised the threat. That prior to that, he had burnt down their matrimonial house where they had resided before the victim fled with her daughter to her parents for safety. That there is need to protect not only the minor and the victim's family but also the trial process.
8. I have duly considered the application before me in its entirety together with rival submissions by counsel and the pre bail report dated 3<sup>rd</sup> June 2025 presented by the Probation officer.
9. Whereas the accused is deemed to be innocent until proved guilty and whereas expeditious trial is a fundamental right that cannot be taken away from the accused, it is unfortunate that trial in this matter did not take off until November 2022 when three (3) witnesses testified. The hearing has since proceeded before me on 2<sup>nd</sup> July 2025 when two (2) witnesses testified. In a nutshell, five (5) witnesses have testified since the accused was arraigned in court in 2015. The matter is now listed for next hearing on 11<sup>th</sup> December 2025. It is not yet clear how many more witnesses the prosecution is yet to call before the matter is finalized.
10. On application for review of bail or bond, the applicant must prove to the satisfaction of the court that there has been change of circumstances to warrant grant of the orders sought. See *Republic v Diana Suleiman Said & another* [2014] eKLR. In this matter the court was clear in its mind, that the application for review shall be considered when adequate considerations have been made regarding security since some suspects were still at large and sentiments of the victim's family taken into consideration.
11. The pre bail report submitted to this court dated 3<sup>rd</sup> June 2025 demonstrates that the victim's family are still apprehensive that the accused's release on bond may be a threat to their safety and may traumatize the accused's and victim's daughter who is also a witness herein. They are also afraid that the accused may threaten or harm witnesses.
12. As to the accused's community background, the local administration is opposed to the accused's release on bond. The chief states that the accused was in the habit of abusing bhang prior to his arrest and arraignment. That despite being warned severally after the deceased made reports of threats by him against her, he still ended up killing her.
13. The report indicates further that the accused's family are willing to avail security for his release on bond. It alludes to the accused's plea that he has suffered in custody for 10 years and that he vows to stay away from the witnesses if released on bond.



14. In conclusion the report indicates that the two previous pre bail reports found the accused unsuitable for bond due to the safety concerns by the victim's family. It noteworthy that although the report generally proposes that the accused is currently suitable for bond it however notes that:

“However, the victim's family and the local administration's fears on safety and interference with prosecution case is valid. It is my opinion that a conditional bond/bail will adequately allay their fears”

15. It is clear that five witnesses, three of whom were considered to be the key prosecution witnesses have since testified. The fifth witness was the child witness whose safety was of paramount concern has also testified. The only outstanding safety concern is that of the victim's family who have not recovered from the circumstances surrounding the deceased's death and the fear that the accused may still harm the daughter who has already testified. I am therefore satisfied that there has been change of circumstances from the time the accused person was first denied bond to the time of this ruling. It is therefore clear that he is entitled to review of the earlier orders denying him bond.

16. The only issue which the court now has to determine, is whether having heard and recorded the evidence of six (5) prosecution witnesses, there now arises the issue of the strength of the prosecution case as a compelling reason, to enable the court deny the same bond, on account that having known the case against him, there is real likelihood and or temptation to abscond, so as to defeat the course of justice.

17. The High Court in *Republic v Irungu alias Jowie & another* (Criminal Case 51 of 2018) [2020] KEHC 8361 (KLR) (Crim) remarked that:

“Whereas it is clear that the court has discretion to grant bail at any stage during trial, when the application for bail is made during the course of trial, one of the compelling reasons which the court has to take into account is the strength of the prosecution, as provided for under the Bail and Bond Policy Guidelines at 4.9 (b) as follows:-

“An accused person should not be subjected to pre-trial detention where the evidence against him or her is tenuous, even if the charge is serious. Conversely, it may be justifiable to subject an accused person to pre-trial detention where the evidence against the accused person is strong. For example, where all the prosecution witnesses have testified and the accused person is aware of the weight of the prosecution's case against him or her, it is presumed that such a person has an incentive to abscond as should therefore be denied bail – see *Republic v Margaret Nyaguthi Kimeu* [2013] eKLR.”

18. The court in the *Jowie case* (*supra*) further remarked that:

“16. .. the strength of the prosecution case in itself, alone is not a good ground to deny an accused person the enjoyment of his constitutional right to bail. It must be demonstrated that by virtue of the strength of the prosecution case, there is a great incentive on the part of the accused person to abscond so as to defeat the course of justice. At this stage the court is not expected to go into the merit of the case. In making the said determination, the court must always balance between the conflicting interest of the State to bring offenders to trial and to dispense justice and the protection of the right of citizens, and



the presumption of innocence, which require that no one without justification should be deprived of personal liberty.”

19. The court at this stage in the trial, is not in a position to conduct a risk assessment as to whether the accused persons are likely to abscond, should they be released on bail and therefore takes the view that unless the bail terms and conditions cannot guarantee their attendance to court, a person who has not been convicted for an offence is entitled to bail, unless compelling circumstances militate against his admission to bail.
20. 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.”
21. 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”.
22. Having stated the legal principles and considered the affidavits and the pre-bail reports in respect of all the accused persons and oral submissions by the parties, I find that there are now no compelling reasons to enable me deny the accused persons their right to bail. The evidence of key prosecution witnesses has now been secured, there has been no evidence of any contact with prosecution witnesses during the period he has been in custody and the likelihood of being a flight risk can be adequately mitigated through appropriate bail/bond terms.
23. 18. 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.
24. 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 person faces a charge of murder, wherein one of the possible sentences upon conviction is death, which must be taken into account.
25. 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.
26. The prosecution has so far called five (5) witnesses and it is not clear how many more prosecution witnesses are yet to be called before close of the prosecution case. The application by the accused person herein is therefore made in the midst of a trial, therefore, the accused person is well acquainted with the nature of the prosecution case. The court should therefore take this into account in setting the bond terms.
27. 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 one million (Ksh 1,000,000) with two (2) sureties of similar amount.
  - b. He shall not make any contact with any prosecution witnesses, including those who have testified against him, in whatever nature unless the same is done in the presence of the Investigating Officer in this case.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Mwangi Wanjiku

For Respondent.....P. Mwangi

Court Assistant.....Brian

