



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Lenalepo (Criminal Case E003 of 2025)
[2025] KEHC 4683 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 4683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E003 OF 2025
DO CHEPKWONY, J
FEBRUARY 18, 2025**

BETWEEN

REPUBLIC STATE

AND

LESAIGILIE LENALEPO ACCUSED

RULING

1. The accused person, Lesaigilie Lenalepo was arraigned in court on 22nd January, 2025, having been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The facts of the case are that:-

“On the 26th day of December, 2024, at Kabete Location in Kabete Sub-County within Kiambu County, the accused murdered one Dan Sowani Lenalepo”.

2. The accused was duly informed of the reason he was in court, which he confirmed he understood and was remanded in custody with orders/directions that:
 - a. He be escorted to Mathari Mental Hospital to undergo a mental assessment to confirm he is mentally fit to plead.
 - b. He be assigned a counsel or legal representation on pro bono basis.
 - c. A Masai interpreter be availed on the next mention date for plea taking.
3. On 28th January, 2025, it was confirmed that the accused had been escorted for mental assessment and confirmed to be mentally fit to plead as per the Mental State Assessment Report dated 8/01/2025. The accused had also been assigned Ms. Waithaka as Counsel on pro bono basis. The matter then proceeded



for plea – taking and the accused person pleaded “Not Guilty” to the offence of Murder contrary to Section 203 of the *Penal Code*.

4. Mr. Magero, Counsel for the prosecution was opposed to the accused being released on bond/bail until such time that a social inquiry will have been conducted and a pre-bail report presented to enable the court make an informed and proper determination on this, based on the circumstances of the case since the accused was father to the deceased. In response, the defence counsel, M/S Waithaka did not object to the request for a pre-bail report to be presented but urged the court to consider releasing the accused on reasonable bond terms once the pre-bail report is presented since it was within his right under Article 49 of *the Constitution* and he is not a flight risk.
5. The court proceeded to call for a Social Inquiry to be conducted on the accused and for a pre-bail information report to be filed in court and served upon the parties for consideration. The pre-bail information report compiled by M/S Mberesia Shakaba, Probation Officer was filed on 17th February, 2025.
6. According to the Prosecution, they opted to rely on the recommendations by the Probation Officer in her report on the issue of the accused being considered for release on bond/bail while the defence counsel continued to urge the court to release the accused on reasonable bond terms since he was not a flight risk and was ready to adhere by any terms the court will pronounce for his release.
7. In considering the application for accused herein to be released on bond/bail terms, the court is guided by the provision of Article 49(1) (h) of *the Constitution* which states that:-
 49. “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.”It is also guided by the Provision of Article 50(2) (a) of *the Constitution* which stipulates that: -
 - (2) “Every accused person has the right to a fair trial, which includes the right –
 - a. to be presumed innocent until the contrary is proved.
8. In determining the terms of bond/bail to grant an accused person, the court is empowered by the provisions as provided for under Section 123 of the *Criminal Procedure Code*.

“(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

- (2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.
- (3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced”.



9. Further to this, Section 123A provides for the circumstances to be considered by the court in making the decision to grant an accused release on bond as follows:-
 - a. The nature or seriousness of the offence;
 - b. The character, antecedents, associations and community ties of the accused person;
 - c. The Defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and,
 - 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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - b. Should be kept in custody for his own protection”.
10. These are further elaborated at Paragraph 4.9 of the Kenya Bail and Bond Policy Judiciary Guidelines and they include:-
 - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - b. The strength of the prosecution case.
 - c. Character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. Likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime from the accused person.
 - g. The relationship between the accused person and potential witnesses.
 - h. Child offenders. Where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor.
 - i. The accused person is a flight risk.
 - j. Whether accused person is gainfully employed.
 - k. Public order, peace or security. Whether the release of an accused person will disturb public order or undermine public peace or security.
 - l. Protection of the accused person. Whether pre-trial detention is necessary to protect the accused person.
11. The Court of Appeal in the case of Michael Juma Oyamo and Another -vs- Republic [2019]eKLR in dealing with the issue of bail/bond has this to say:-

“(23) We have carefully considered the record of appeal, the submissions by counsel and the various authorities cited. Article 49 (1) (h) of *the Constitution* states 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”. It is therefore clear that such constitutional right can only be limited if the prosecution satisfies the court that there are compelling grounds to warrant its denial to an accused person. We wish to adopt the definition of what amounts to compelling reasons as defined by the High Court in Republic -vs- Joktan Malende and 3 Others, Criminal Case No. 55 of 2009 as follows:

“.....The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*”.

“(24) According to the recently launched publication, Criminal Procedure Bench Book at pages 48 – 51 paragraph 105, compelling reasons may include the likelihood that the accused will fail to attend court; commit or abet the commission of, a serious offence; endanger the safety of victims, individuals or the public; interfere with witnesses or evidence; endanger national security or public safety; and where it is necessary for the protection of the accused”.

12. Having considered the Law, the Legal Provisions and Principles on bond/bail, I have also read through the pre-bail information report dated 17th February, 2025, which is based on the accused person’s family/personal background, the family’s willingness and ability to respond to his bail/bond terms, possible interference with the trial process, community ties, bond/cash bail availability, the victim’s concerns and determines the accused’s availability to attend court if granted bond or bail.
13. According to the Probation Officer, the report was compiled upon perusal of court’s and prosecution’s files, conducting interviews with the accused, the victim’s brothers, Ntaini Lenalepo and Samuel Lenalepo and the Local Administration of the accused’s area of settlement represented by Chief Macharia and Chief Johnson Lopus.
14. Having concluded the Social Inquiry on the accused, the Probation Officer reported that the accused is a sixty-six (66) years old man, resident at Thome Location in Laikipia County with no formal education, married with eight (8) surviving children for whom he is their breadwinner. According to the Probation Officer, the accused is aware of the seriousness of the charge against him but pleads for lenient bond or bail terms due to his medical condition and an opportunity to continue providing for his family. He undertakes to attend court hearings, commits to adhere to all conditions that will be set by the court and not to interfere with any witnesses or obstruct the course of justice.
15. The Probation Officer also reports that the accused person’s family is supportive of his application for bail/bond and his two sons, namely Ntaini Lenalepo and Samuel Lenalepo have expressed their willingness to stand by him during this entire process.
16. As for the victim’s family, the same happens to be the accused’s family as well and while grieved over the victim’s death, they have raised their concern about the accused person’s well being considering his advanced age and medical condition and they are not ready to lose two family members.
17. It further reported that the Chief of Thome Location, Mr. Macharia and the Chief of Mazeras sub-location, Chief Lopus confirmed knowing the accused and his family and state that they have no criminal record of him.



18. Both family and the Administration are reported not to be opposed to the accused person being released on bond/bail terms. In view of this findings, the Probation Officer recommends the accused person as suitable to be admitted to favourable bail/bond terms.
19. There having been no objection by the prosecution for the accused person's application for bond/bail terms and the positive findings and recommendations by the Probation Officer in the pre-bail information report dated 17th February, 2025, it is clear that there are no compelling reasons to warrant the accused being denied release on bond/bail. This Court then is satisfied that this is a proper case for grant of bail/bond terms for the accused and does make the following orders: -
- a. The accused person may be released on a bond of Kshs. 500,000/= with one surety of a similar amount; and is,
 - b. In the alternative, the accused person to be released on cash bail of Kenya Shillings Two Hundred Thousand (Kshs.200,000/=) only.
 - c. The accused person to provide clear and full particulars of a contact person.
 - d. The accused person to provide clear and full particulars of his place of abode during the pendency of this case.
 - e. The accused person to attend court as and whenever he is required until the full determination of this case.
 - f. Failure to comply with any of the above conditions, the accused person's bond will be cancelled and he be remanded in custody during the remainder of his trial.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 18TH DAY OF FEBRUARY, 2025.

D.O CHEPKWONY

JUDGE

In the Presence of:

Ms. Ndeda Counsel for the State

Ms. Waithaka Counsel for Accused person

Accused – Present

Martin – Court Assistant

