



REPUBLIC OF KENYA



**Republic v Khayega (Criminal Case E004 of 2025)
[2025] KEHC 3763 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E004 OF 2025
AC BETT, J
MARCH 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MESHACK KHAYEGA ACCUSED

RULING

1. The Accused, who is charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code* has applied to be admitted to bond pending hearing and determination of the case.
2. Since the prosecution objected to bond, the court called for a pre-bail report. The pre-bail report recommends that the Accused be kept in custody due to the reasons given therein.
3. The social inquiry undertaken for the pre-bail report established that the Accused is a habitual alcohol and bhang user. He is accused of murdering his wife in the presence of their children who are of tender age. One of the children was grievously wounded during the incident and was still hospitalized at the time of the social inquiry.
4. It was further established that the Accused is known for his violent and criminal tendencies including an alleged attempt to defile his two daughters.
5. The victim's family expressed a strong opposition to the Accused being released on bond and recounted how he physically assaulted and abused the deceased previously and even attempted to commit suicide when the deceased refused reconciliation at one time.
6. The local leaders strongly opposed bond and cited fears of retaliatory attacks from the community who were outraged by the offence. They stated that the Accused's house was burned down following the incident and his family is now living in fear. In the circumstances, the Accused is deemed to be a flight risk.



7. Mr. Biketi for the Accused put up a strong argument on his behalf. Citing the case of Harun Mandela Waibei v. Republic [2014] eKLR, he said that there are various court authorities that the Probation Officer's report is not binding on the court. According to him, Article 49 (1) (h) of *the Constitution* grants an accused person the right to bond unless there are compelling reasons.
8. Mr. Biketi argues that there is no evidence that the Accused is a flight risk or a danger to public safety. He posits that the allegations are mere speculations which do not amount to compelling reasons. He further relies on the cases of Republic v. Naisuba Mohammed Haji Osman [2018] eKLR and Republic v. Joktan Mayende and 3 others [2012] eKLR where it was held that compelling reasons must be forcefully convincing to make the court feel strongly that an Accused person should not be released on bond.
9. Under Article 49 (1) (h) of *the Constitution*, an accused person can only be denied bond where there are compelling grounds for the denial and it is upon the prosecution to prove the existence of the compelling reasons.
10. Although the law does not define what constitutes compelling reasons, the plain dictionary meaning is that it is a strong persuasive, convincing or powerful ground. In Michael Juma Onyamo & Another v. Republic [2019] eKLR, the court of Appeal adopted the definition of the phrase "compelling reasons" in the case of Republic v. Joktan Malende and 3 others (supra) where the learned Judge said:-

“... 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*.”
11. Section 123A of the *Criminal Procedure Code* sets down the circumstances to be considered by the court in considering an application for bond and provides that:-
 - “(1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding (Section 123), in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (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 fulfillment 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.”



12. The Bail and Bond Policy Guidelines also lists factors that should be considered by the court in determining whether or not there exist compelling reasons to grant bond. The guidelines are as follows:-

- “a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-
- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- f. That the accused person is likely to interfere with witnesses or evidence; or
- g. That the accused person is likely to endanger national security; or
- h. That it is in the public interest to detain the accused person in custody.”

13. There is clear evidence that was not disputed by the Accused that the community turned hostile once it was suspected that the Accused had killed his wife and injured his son. Since his house was burnt down, and the people are still hostile, the Accused’s security is not only at risk, but releasing him could lead to a breach of the peace thereby endangering public order and security. As it stands, the Accused is currently an undesirable person in the community and this constitutes compelling reasons to deny him bail.

14. I find that the fear that the Accused is a flight risk is not well founded for the reason that his relatives are said to be willing to support him.

15. For the reasons stated I find that the prosecution has adduced sufficient reasons to deny the Accused person bail.

16. The application for bond is hereby dismissed.

17. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24TH DAY OF MARCH 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Ms. Biketi for the Accused

Court Assistant: Polycap

