



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mohamed (Criminal Case E001 of 2025)
[2025] KEHC 3427 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL CASE E001 OF 2025
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

AHMED ABDULLAH MOHAMED ACCUSED

RULING

1. Accused 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.
2. The particulars of offence are that on the 8th day of February, 2025 at Orgewein Location within Mandera North Sub-County, Mandera County he murdered Sahara Rahoi Abdi.
3. Having pleaded not guilty, the defence applied for the release of the accused person on bail while contending that; it is his constitutional right under Article 49 (1)(h); he is not a flight risk and that there are no compelling reasons to deny him bail.
4. On the other hand, prosecution opposed the application for release of the accused on bail citing grounds that; he is a flight risk; he has no place of affixed abode; he has no family ties in Kenya, and that he is an Ethiopian citizen who cannot easily be traced in case he absconds. Mr. Owour, prosecution counsel contended that release of accused person on bail is not an absolute constitutional right.
5. Learned counsel relied on the affidavit opposing bail sworn by the Investigating Officer PC Adupu Ekidor who averred that while the offence was committed on 8th February, 2025, accused person was arrested on 11th February, 2025 by members of public with the help of the local administration while trying to escape to Ethiopia through river Dauwa, an illegal exit point.



6. That after the commission of the offence, accused person went into hiding for three days until the time he was arrested. He averred that accused person hails from Komgula a village within Gikgiga County in Ethiopia hence his permanent place of residence cannot be ascertained.
7. That owing to the seriousness of the offence and the severity of the sentence attached thereto, accused is likely to abscond from this Court's jurisdiction.
8. In support of his averment, the investigating officer attached a statutory declaration statement of one Ajir Noor Hassan who assisted in arresting the accused person after the accused person had approached him to assist him escape from Rhamu in Kenya to Ethiopia. That the accused person disclosed to him how he was involved in the killing of a girl and that his life was in danger.
9. Prior to the hearing of the application, Court ordered for a pre-bail report which revealed that the accused and the victim's family are engaged in a compensation exercise whereby accused's family has promised to pay 50 camels with 15 of them due by end of this month and the rest to be paid before he could be released. The report confirms that accused is an Ethiopian citizen whose residence is unknown. In conclusion, the report indicates that accused is a flight risk as he has no place of fixed abode. Finally, the report does not recommend release of the accused person on bail.
10. I have considered the application herein seeking release of the accused on bail pending trial. I have also considered the objection thereof by the prosecution. According to the prosecution, the accused person is a flight risk and that he has no place of fixed abode hence unsuitable to be released on bond. On the other hand, accused person contends that bail is a constitutional right and there is no proof that he is an Ethiopian.
11. It is trite that bail is a constitutional right under Article 49 (1) (h) which cannot be withheld unless there are compelling reasons. However, in as much as bail is a constitutional right, the same is not absolute under Article 25 of *the Constitution*. See the case of Republic vs Danson Mgunya & Another [2010] eKLR where the Court described the right to bail as an "inalienable right" by holding that;

"The result of the foregoing is that a murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."
12. I am alive of the essence of release of the accused person on bail if circumstances allow to avoid detention before trial which is unconstitutional. Having taken into consideration the investigating officer's affidavit in opposition of release of the accused person on bail and the pre-bail report and, further taking into account the fact that accused person is an Ethiopian with no place of fixed abode which has not been disputed, it calls upon the Court to weigh on the possibility of the accused not returning to Court for hearing.
13. Considering that the accused person is facing a serious offence attracting a maximum death penalty and considering that he was caught while enroute to Ethiopia his home country, chances of him returning to Kenya are minimal. In that regard I am in agreement with the holding in the case of Republic v Makoy Madhak Deer [2015] KEHC 7145 (KLR) where the court held that;

"Further, this court is of the view that the temptation for the Respondent to flee from the jurisdiction of the court is high taking into consideration that he is facing the serious charge of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. If convicted, the Respondent will face a mandatory life imprisonment. Although the Respondent is presumed innocent by the law, however, this court is of the view that the trial



court did not take into consideration all factors before arriving at the decision to release the Respondent on bail pending trial. There are compelling reasons for the court not to release the Respondent on bail pending trial.

14. Further, release of accused person on bail is to ensure that he is at liberty to attend Court while out of detention. However, in this case, it is clear that the accused has no family ties in Kenya and if he escapes to Ethiopia, it will be difficult to trace him. To that extent, I agree with the prosecution that there are compelling reasons not to release the accused on bail pending trial. See the case of Republic vs Wycliffe Nyakwana Nyamweya (Criminal Revision 135 of 2016) (2016) KEHC 7930 (KLR) (Crim) (28 July 2016) (Ruling) where the court held that;

“It is therefore my view that the discretion to grant bail and set the conditions rests with the court. In all cases where the court is called upon to exercise its discretion in regard to whether or not it should grant bail pending trial, the most important consideration is whether the accused will attend court during trial”.

15. In the circumstances, the application for bail is hereby rejected and the accused shall remain in custody pending trial.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20TH DAY OF MARCH 2025

J.N. ONYIEGO

JUDGE

