



**Republic v Ligare (Criminal Case E005 of 2025)
[2025] KEHC 2703 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E005 OF 2025
AC BETT, J
MARCH 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

STEPHEN OBONYO LIGARE ACCUSED

RULING

1. This is a ruling on an application by the Accused to be admitted to bail or bond.
2. The application was opposed and the court called for a pre-bail report to assist it in making its determination.
3. The pre-bail report recommends that the bond be deferred at this stage due to hostility from the victim’s family and tension in the community. It is stated that the area Administration prays that the Accused remains in custody for the time being due to fear that the victim’s relatives, friends and sympathizers could retaliate against the Accused in the event he is released on bond at this juncture.
4. Ms. Chala for the State reiterates the position of the Probation Officer and points out serious security concerns regarding the Accused. She submits that prior to his arrest, the Accused was attacked.
5. Ms. Chala, also submits that there are grounds to fear that the Accused may interfere with the witnesses and therefore his bond should be deferred until the said witnesses would have testified.
6. In rejoinder, Ms. Kaweso for the Accused submits that bond is a constitutional right and the Accused is willing to abide by any terms and conditions set out by the court.
7. I have considered the application. Article 49 (1) (h) of the *Constitution* provides:-

“(1) An arrested 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 therefore follows that an Accused person, who must be presumed guilty until proven guilty by virtue of our Constitution, can only be denied bond where there are compelling reasons.

8. I have perused the covering report in the committal bundle and established that indeed, the Accused was assaulted by members of the public on 31st December 2024 when they discovered the body of the deceased and suspected him to be the killer. According to OB. No. 15/31/12/2024, after the Accused was severely assaulted by members of the public, they took him to the field and forced him to lie down next to the body of the deceased.
9. The pre-bail report corroborates the OB report and points to some form of animosity towards the Accused by members of the public.
10. The [*Judiciary Bail and Bond Policy Guidelines*](#) March 2015 sets out the judicial policy on bail and bond as follows:-

“4.26 The following procedures should apply to the bail hearing:

- (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:
- a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the [*Criminal Procedure Code*](#) is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.”

11. In considering whether or not to release the Accused on bail, the court needs to take the Accused person’s circumstances into account as well as those of the victims or their families. The court must also take the public interest into account.



12. It is undisputed that the Accused was severely assaulted by enraged members of the public after the incident. The Probation Officer's inquiry established that the community still harbours some animosity towards the Accused and consequently there is tension regarding the likelihood of his release. The inherent tension could result in an attack on the Accused if released on bond. It is the duty of the court to ensure that there is no breach of the peace.

13. Section 123A of the Criminal Procedure Code which provides as follows:-

“(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.”

14. From the evidence on record, which includes the Accused's own statement, he was severely assaulted by members of the public after the incident. There is no indication that the animosity towards the Accused has dissipated. This court is enjoined to protect the Accused from the wrath of the community.

15. Considering the recommendation in the pre-bail report, it is safer to take a cautious approach towards the application for bond as the ground is still volatile. In the premises, the application for bond is deferred.

16. However, with respect to the claim that the Accused may interfere with witnesses, I find no substance in the claim.

17. For the reasons stated above, I decline to admit the Accused to bond at this point. The Accused shall remain in custody and will be at liberty to revisit the application for bond after the first hearing by which time the tensions in the community will have hopefully reduced.

18. In the light of the foresaid, the case should be listed for hearing on a priority basis.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11TH DAY OF MARCH 2025.

A. C. BETT

JUDGE

In the presence of:



Ms. Chala for the Prosecution

Ms. Juma for the Accused

Court Assistant: Polycap

