



**Republic v Ambenge (Criminal Case E010 of 2024)
[2025] KEHC 4208 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E010 OF 2024
DR KAVEDZA, J
APRIL 3, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERICKSON LIHENGE AMBENGE ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code, Cap 63 Laws of Kenya. The particulars of the offence are that on 14th May 2024 at around 1630 hrs at Kawangware Stage 2 area, Dagoretti sub County within Nairobi County murdered Victor Kuyanda Kulichi. He pleaded not guilty. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
2. The prosecution filed an affidavit dated 2nd July 2024 opposing bail. It was averred that the accused is flight risk and is likely to interfere with prosecution witnesses. In addition, the accused has no fixed abode reducing the likelihood of his court attendance and making it harder to locate him if he flees. He urged the court to deny bail at this stage.
3. In response, the accused asserted that he is not a flight risk and has a fixed abode. Further, that the prosecution has not presented compelling evidence to warrant his continued detention. That he has willing sureties who will ensure he attends court. He urged the court to issue reasonable bail terms.
4. I have considered the application, the opposition, the response and the applicable law.
5. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.



6. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the *Constitution*, the courts are to be guided by the provisions of section 123A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

- (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.

7. The pre-bail report on record indicated that the accused is a 30-year-old single adult with no dependents. He is in good health and has no known history of bond or bail. However, limited information was obtained from him, preventing further inquiry. His views and those of his relatives on bond/bail remain unknown.

8. Further, before his arrest, an irate mob vandalized his home while attempting to lynch him. Local authorities report community hostility towards his return to Kawangware. Investigators also consider him a flight risk due to his lack of a fixed address. In addition, the secondary victims, still mourning their son, fear for key witnesses' safety and the accused's potential to flee if released.

9. Having considered the pre-bail report and the circumstances surrounding this application, it is evident that the accused lacks a fixed place of residence and is deemed a flight risk. The report further highlights security concerns, with the local community expressing strong opposition to his release. Additionally, key prosecution witnesses, who are his relatives, face a credible risk of interference should the accused be granted bail.

10. The probation report paints a concerning picture, suggesting that the accused's safety may be at risk if released, given the hostility from the community. Furthermore, the accused's refusal to cooperate during the social inquiry process has impeded efforts to verify crucial details regarding his background, residence, and support system. This lack of transparency undermines his application for bail.

11. It is well established that bail, while a constitutional right, is not absolute and remains a matter of judicial discretion. In the present circumstances, I find that the prosecution has demonstrated compelling reasons justifying the denial of bail.

12. Accordingly, the accused's application for bail is dismissed at this stage.

Orders accordingly.



RULING DATED AND DELIVERED VIRTUALLY THIS 3RD DAY OF APRIL 2025

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Dumbo for the Accused

Tonny Court Assistant

