



**Republic v Tiffow & 2 others (Criminal Case E004 of 2025)  
[2025] KEHC 6658 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6658 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E004 OF 2025**

**JN ONYIEGO, J  
MAY 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MOHAMED KASSIM TIFFOW ..... 1<sup>ST</sup> ACCUSED**

**MUSA SHEIKH AHMED ..... 2<sup>ND</sup> ACCUSED**

**ADAN MOHAMED AHMED ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The accused persons herein were charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars are that; on the 22<sup>nd</sup> day of March, 2025 at Lolkuta South Sub-location, Wara Location, Hadado Sub-county, within Wajir County in the Republic of Kenya they jointly murdered Gaala Adan.
2. During plea taking, accused two could not plead to the charge as he is mentally unfit to stand trial. As a consequence, the court ordered for him to be taken to Mathari mental hospital for treatment.
3. On the other hand, the 1<sup>st</sup> and 3<sup>rd</sup> accused persons denied the charge and a plea of not guilty entered. Consequently, they prayed to be released on bail pending trial. Prosecution indicated that they had no compelling reason to oppose the release of the two on bail. However, the victims' family represented by M/ Hibo, Mr. Nyipolo and Mr. Kuchio opposed the release of the accused on bail citing grounds that; the accused are a flight risk; they will interfere with witnesses and that the victim's mother feels threatened.
4. Mr. Oloo for the accused urged that the accused having been held since 25-03-25 on orders from the Wajir magistrate's court to allow prosecution complete investigation and further considering that the prosecution has no objection, accused should not be denied their constitutional right. Counsel



- contended that there was no proof that witnesses have been influenced or any attempt made. Regarding threats on the victim's mother, counsel opined that she is based in Daddab refugee camp about 200kms away from the accused's place. Lastly, counsel urged that the accused are innocent until proved guilty.
5. Consequently, the court ordered for pre-bail reports which were filed on 15<sup>th</sup> May, 2025 recommending that the accused were suitable for release on bond. However, the victim's family strongly opposed the report on grounds that they were not involved nor contacted. Faced with that scenario, the court ordered for a second pre-bail report involving the opinion of the victim's family.
  6. A second report was filed on 16-05-2025 stating that the accused were not suitable for release on bail on grounds that; the security of the accused is not guaranteed as the community is bitter; offence committed is serious; victim's family is still bitter and that they can be considered at a future date when tempers would have cooled down.
  7. When the matter was mentioned again for further submissions, parties maintained their earlier positions.
  8. I have I have considered the application herein, the response thereof and oral submissions by both counsel.
  9. Article 49 (1) (h) of *the Constitution* provides that: - 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.
  10. Compelling reasons are not defined in *the Constitution* in as much as Section 123A of the *Criminal Procedure Code*, provides the parameters for the grant of the right to bail 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.
  11. The factors to be considered in determining whether or not to grant bail are also set out in the Kenya Judiciary's Bail and Bond Policy Guidelines. In the same breadth, it is not in doubt that the rationale behind any release of an accused person on bail or bond in Kenya is premised on the constitutional provision under Article 50 (2) (a) of *the Constitution* that an accused person is presumed innocent until the contrary is proved.
  12. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.



13. The question that seeks to be addressed is ‘what is the meaning of compelling reasons.’ In the case of Republic V Joktan Mayende & 3 Others [2012] eKLR, Mohamed Abdrurrahman Said & Another V Republic [2012] eKLR and, Wilson Thirimba V DPP [2012] eKLR, among others, the respective Courts reverted to the meaning of the word ‘compelling’ which is defined in the Concise Oxford Dictionary, 9<sup>th</sup> Edition as ‘rousing, strong, interest, attention, conviction or admiration’.
14. However, ‘compelling reasons’ is relative as it depends on the circumstances of each case. As such, the mere fact that the offence with which an accused is charged carries a severe sentence is not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond from appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will be able to attend the trial and whether or not a free and fair trial can be achieved notwithstanding the release of the accused on bond.
15. The imposition of terms of bail, if necessary, must similarly be for the purposes of ensuring the attendance of the accused at the trial and ought not to be based solely on the sentence that the accused stands to serve if convicted. See 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”.
16. Similar position was re-emphasized by the court in Republic –Vs- Danson Mgunya & Another [2010] eKLR where M. K. Ibrahim J (as he then was) held thus;

“As a matter of fact, all other criteria are parasitic on the omnibus criterion on availability of the accused to stand trial. Arising directly from the omnibus criterion is the criterion of the nature and gravity of the offence. It is believed that the more serious the offence, the great incentive to jump bail although this is not invariably true. For instance, an accused person charged with capital offence is likely to flee from the jurisdiction of the court than one charged with a misdemeanour, like affray. The distinction between capital or non-capital offence is one way crystallized from the realization that the atrocity of the offence is directly proportional to the probability of the accused absconding. But the above is subject to qualification that there may be less serious offences in which the court may refuse bail, because of its nature.”
17. In exercising its discretion, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. As the fundamental consideration is the interests of justice, the court will lean in favour of liberty and grant bail where possible, provided the interests of justice will not be prejudiced by this. However, where the prosecution satisfies the Court that there exist compelling reasons which justify the denial of bail or bond, then the Court will deny the same.
18. As already noted, the primary consideration for bail is whether the accused will attend court for his trial. Therefore, if a compelling reason is demonstrated that the accused person is likely to fail to attend court proceedings, then the discretion should be denied. [See Kelly Kases Bunjika Vs Republic [2017] eKLR.



19. In the instant case, the only reasons advanced for the refusal to grant bail is the allegation that; the accused persons are a flight risk and a threat to the victim's family; the victim's family and the community at large does not want them and that; it is in their best interest that they be detained in custody until such a time that the situation shall have calmed down. Whereas one of the grounds for refusal to release an accused person on bail is where his life is in danger, the danger must be so imminent and palpable and not just but the desire to see somebody in detention.
20. In this case, the accused have been held in custody for two months now to enable prosecution complete investigation. Prosecution has no objection to the release of the accused on bond as there are no compelling reasons not to grant them bail. It would appear like the victim's family is not happy with the position taken by the prosecution. The argument that the safety of the accused is not guaranteed is not tenable as the first pre-bail reports showed that the community from where they come from is receptive and not bitter.
21. As to the threats against the victim's mother and the possibility of interference through maslah, that has not been established. The same is speculative hence not tenable. As to the question of being a flight risk, there was no evidence demonstrating the possibility of running out of this court's jurisdiction.
22. Courts should not deny a citizen his constitutional right based on a mere expression of interest by society. Obviously, in every death, there is bitterness expressed. That alone cannot take away the right for an accused to be released on bail pending trial. An accused person is deemed innocent until proved guilty.
23. In the circumstances, I am not persuaded that there are compelling reasons advanced not to release the accused persons on bail pending trial. To that extent, the application herein is allowed and accused persons are hereby released on a bond of Kes one million with one surety of same amount.
24. They are however directed to report once per month at the DCI's office at Habaswein office and keep off from contacting any witness or any member of the victim's family or even go near the victim's family's home nor move out of this court's jurisdiction without its permission.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**J. N. ONYIEGO**

**JUDGE**

