



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Bartinga (Criminal Case E007 of 2025)
[2025] KEHC 8028 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E007 OF 2025
RB NGETICH, J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN CHEBOIWO BARTINGA ACCUSED

RULING

1. The accused Edwin Cheboiwo Bartinga has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused person on the 25th day of March, 2025 at Root Village, Kellio Mosop Sub-location, Baringo North Sub-County within Baringo County jointly with others not before court murdered one Samuel Chelelgo.
2. On the 30th April, 2025, the charge and its full particulars were read over and explained to the accused who denied the charge and a plea of not guilty was entered. The defence counsel Mr. Kipkulei prayed for the accused to be released on lenient bond terms stating that the accused has been in remand for more than a month. The prosecution did not oppose the application for bond but requested that a pre-bail report be filed which was filed as directed by the court.

Prebail Report

3. From the report, the accused did his KCSE in the year 2022 at Aiyebo Secondary School and obtained a mean grade of D+. The accused has been doing farming on family land and casual jobs within the community after completing his secondary education. He is to join Eminging Technical College to pursue a course in automotive engineering in the month of September 2025. He is single and does not have any dependent. The accused does not have any history on adherence to bond terms and this is his first-time offence.
4. The accused's father, sister and brother all prayed for the accused to be released on bond so that he can continue with his education. The family has a plan to enroll him at Eminging Technical to study for a



technical course in automotive engineering. The father is willing to provide his title deed as security and ensure that the accused person appears in court when required. The sister who works as a teacher at Eming indicated that if it is not safe to release accused home, she is willing to accommodate her at her place of work at Eming. The father stated that they have been having a good relationship with the victim's family.

5. The victim's family members available for interview included the victim's father, grandfather, aunt and the uncle. The victim was aged 17 years and he had formal education up to standard eight. He did his KCPE in the year 2023 but did not continue with his education due to fee challenge and for a living, the victim was doing casual jobs within the community.
6. The victim's family are opposed to bond on ground that they have not healed. The local administration is not opposed to accused being released on bond and confirm that his security at the local level is good and he is not a flight risk and not a threat to secondary victims and witnesses and this is his first offence.
7. The accused person's father indicated that he is willing to stand Surety for his son using the family land title deed.

Determination

8. under Article 49(1)(h) of the *Constitution*, the accused has a right to be released on bond pending the hearing and determination of his/her case unless there is some compelling reason. Moreover, by dint of Article 50(2) of the *Constitution*, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.
9. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates relevant factors to be considered while determining bond application as hereunder: -
 - “(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 fulfilment 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.



10. The general guideline under *Bail and Bond Policy Guidelines* is restated at Paragraph 4.9 that:-

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the *Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

11. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:

- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- (b) The strength of the prosecution case.
- (c) The character and antecedents of the accused person.
- (d) The failure of the accused person to observe bail or bond terms.
- (e) The likelihood of interfering with witnesses.
- (f) The need to protect the victim or victims of the crime.
- (g) The relationship between the accused person and the potential witnesses.
- (h) The best interest of child offenders.
- (i) The accused person is a flight risk.
- (j) Whether the accused person is gainfully employed.
- (k) Public order, peace and security.
- (l) Protection of the accused persons.

12. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.

13. From the report, the applicant wishes to join Emining Technical college in September, 2025. His father is willing to stand surety for him using his title deed and undertakes to ensure that he attends court when required. The victim’s family’s reason for objecting bond is that they have not healed which is understood effect for loss of a loved. However, the local administration indicate that the accused will not interfere with witnesses neither will his security be compromised within the community. In view of the above I see no compelling reason to deny accused bond.

Final Order: -

14. Accused may be released on bond of Kshs 500,000 with one surety of a similar amount.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 15TH DAY OF MAY 2025.

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RACHEL NGETICH

JUDGE



In the presence of:

Ms. Kosgei for State.

Accused present.

No appearance for accused.

Elvis/Momanyi – Court Assistants.

