



**Republic v Komen & another (Criminal Case E002 of 2025)
[2025] KEHC 8838 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8838 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E002 OF 2025**

**RB NGETICH, J
JUNE 19, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GILBERT KOMEN 1ST ACCUSED

BRIAN KIPKORIR ALIAS OSAMA 2ND ACCUSED

RULING

1. The accused persons Gilbert Komen and Brian Kipkorir Alias Osama herein have been jointly 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 persons between the night of 1st March,2025 and morning of 2nd March,2025 at unknown time at Kaplelechwa area, Kabiet Location, Koibatek Sub-County within Baringo County, jointly murdered Francis Barshiba Koech.
2. On the 8th April,2025, the charge and its full particulars were read over to the accused persons who denied the charge and a plea of not guilty was entered. The court directed that a pre-bail report be filed and fixed the matter for mention on 20th May, 2025 to confirm filing of the pre-bail report and fixing a hearing date.

Pre-bail Report.

3. From the report, the accused was born in the year 1975. He went to school upto class 8 but did not proceed with secondary education due to lack of parental guidance since his mother was by then living far in Njoro where she was pursuing casual jobs. During this period, the accused was under the guardianship of his uncles. Upon leaving school, he engaged himself in casual jobs in farms. Prior to his arrest, he was performing casual jobs in farms. The accused is married to one Evaline Yator and the couple has 4 children. The family lives at Toniok area in the sister's land.



4. The accused person's sister is willing to bail him out using a Title Deed. The accused person prays for admission into favorable bond terms stating that he will abide by all the conditions set by this honorable court. He promises to attend to court proceedings whenever required.
5. The accused's family pray for release of accused on bond on ground that he has been a law-abiding person in the past.
6. The relatives of the late victim are opposed to the victim's prayer of being released on bond citing underlying safety concerns despite being related to accused's family.
7. The local administrator states that the accused is well known to him and has not been involved in criminal activities in the past. The community, through the area administrator however are of the view that the home environment is currently not friendly to the accused person.

Determination.

8. Bail is a constitutional right of every citizen. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested person has the right ... to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”
9. 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.
10. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:-
 - (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.



11. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in 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.”
12. 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.
13. 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.
14. From the pre-bail report, the accused’s relatives are ready and willing to stand surety for the accused if released on bond. The victim’s family are opposed to accused being granted bond and the local administration are however opposed to accused being released on bond on ground that home environment is still hostile and the life of the accused persons are still at risk.
15. In view of the above, I find that in the interest of accuseds’ persons safety, it will not be safe to them on bond at this stage of trial.
16. Final Orders: -
- a. Accused persons are denied bond.
 - b. Accused person may renew bond application at a later stage of trial.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET' THIS 19TH DAY OF JUNE, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omari for State.

Mr. Murunga for accused.

CA, Elvis/Momanyi.

