



**Republic v Achuka (Criminal Case E013 of 2024)  
[2024] KEHC 17022 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 17022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE E013 OF 2024**

**TA ODERA, J  
JUNE 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALVINE NYAMA KO ACHUKA ..... ACCUSED**

**RULING**

1. The accused herein is charged with murder contrary to section 203 as read with Section 204 of the penal code. Plea was taken on 15.5. 24. Defence applied for bond and prosecution stated that they had no compelling reasons for accused to be denied bond save that they sought for a pre-bail report to assess the situation at home before granting of bond. The court ordered for a pre-bail report. The pre-bail report was filed on 14. 6.24 and in the report it is indicated that no one had an issue with accused who is the father to the deceased and that his own father was willing to bail him out for him to bury his child. The local administration also have no issue with release of accused on bond as per the report.

Bond is available to all accused under Article 49 (1) (h) of *the Constitution* of Kenya as a matter of right unless there are compelling reasons to deny the same.

Section 123A of the criminal procedure code was enacted to give effect to Article 49 (1) (h) of *the Constitution* of Kenya. It provides “



123A.	<p>Exception to right to bail</p> <table border="1" data-bbox="574 302 842 1948"> <tr> <td data-bbox="574 302 638 1948">(1)</td> <td data-bbox="638 302 842 1948"> <p>Subject to Article 49(1)(h) of <u><i>the Constitution</i></u> 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 —</p> <table border="1" data-bbox="654 1646 842 1948"> <tr> <td data-bbox="654 1646 686 1948"></td> <td data-bbox="686 1646 842 1948"> <p>(a) the nature or seriousness of the offence;</p> </td> </tr> </table> </td> </tr> </table>	(1)	<p>Subject to Article 49(1)(h) of <u><i>the Constitution</i></u> 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 —</p> <table border="1" data-bbox="654 1646 842 1948"> <tr> <td data-bbox="654 1646 686 1948"></td> <td data-bbox="686 1646 842 1948"> <p>(a) the nature or seriousness of the offence;</p> </td> </tr> </table>		<p>(a) the nature or seriousness of the offence;</p>
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(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;

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	of the offence;
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(2)	A person who is arrested or charged with



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2. It is thus clear that Section 123 A of the *Criminal Procedure Code* and the bail bond guidelines of Kenya provides for factors the court should consider before granting or denying bail. In the case of *Margaret Syombua Kyalo v Republic* [2019] eKLR it was held “

11. In her ruling the learned trial magistrate has clearly set out what should be taken into account when the court is considering the release of an accused person on bond. She set out the criteria as follows: -
  - i. The nature of the charge.
  - ii. The strength of the evidence which supports the charge.
  - iii. The gravity of the punishment in the event of conviction.



- iv. The previous criminal record of the Applicant.
- v. The probability that the criminal may not present himself at trial.
- vi. The likelihood of further charges being brought against the accused.
- vii. The likelihood of accused interfering with witnesses or suppress any evidence that may incriminate him.
- viii. The probability of finding the Applicant guilty as charged.
- ix. The detention for the protection of the accused
- x. The necessity to preserve medical or social report pending finding disposal of the case.

3. In the same case it was further held that”

4. The granting of bond to an accused person is guaranteed by *the constitution* under Article 49(1) (h) which 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”.

The same can only be denied if there are compelling reasons to warrant the same.

5. Bond is not opposed and the pre-bail report also indicates that the home environment is favourable to accused. There is thus no compelling reason to deny accused bond. I proceed to allow the application for bond.

**DELIVERED VIRTUALLY IN OPEN COURT AT KISII IN THE PRESENCE OF:**

**T.A ODERA**

**JUDGE**

**19. 6.24**

Accused

Koima for Prosecution

Court Assistant: Oigo

