



**Republic v Ismile & 3 others (Criminal Case E040 of 2024)
[2025] KEHC 13452 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E040 OF 2024
AC BETT, J
SEPTEMBER 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABBAS ISMILE 1ST ACCUSED

FELIX WESONGA 2ND ACCUSED

HAMZA OMONDI 3RD ACCUSED

GERALD JOSEPH KADIMA 4TH ACCUSED

RULING

1. On 19th August 2024, one Simon Owayo Tolo was murdered. Subsequently, the 1st and 2nd Accused persons were arrested on 21st August 2024 and thereafter arraigned in court where they jointly faced the charge of murder.
2. On 10th March 2025, the 3rd and 4th Accused were also arrested in connection with the same murder and after taking plea, the matter was fixed for consolidation so that all the four Accused persons could be tried jointly.
3. After consolidation and fresh plea, Counsel for the 2nd and 3rd Accused prayed that the two Accused persons be admitted to bail pending the hearing and determination of the case.
4. I have considered the pre-bail reports. There is an indication that the 2nd Accused moved to Busia in late August 2024 in a bid to evade arrest. Moreover, his house was brought down following the murder and is currently houseless. The victim’s family are said to have expressed fear as a result of threats. However, they have never made a formal report of the threats to the police.



5. The pre-bail report on the 4th Accused is that he resides in his paternal grandfather's house. The victim's family allege that they have received threats from both of the Accused and fear potential rehabilitation. They also expressed apprehension that the 3rd and 4th Accused persons are likely to interfere with the witnesses if released on bond.
6. Pursuant to Article 49 (1) of *the Constitution*, every Accused person is entitled to bail unless under exceptional circumstances. Section 123 of the Criminal Procedure Code provides the legal framework for decisions on bail while the Bail and Bond Policy Guidelines enumerate the factors that should be considered when determining whether an Accused should be admitted to bail. The main objective of bond is to ensure that an Accused person attends court for hearing of his case to its final determination.
7. The 1st and 2nd Accused persons entered a plea of not guilty on 3rd October 2024 and were each granted bond of Ksh. 300,000/= with one surety of similar amount. There is nothing distinctly unique in the 3rd and 4th Accused person's circumstances that would call for denial of bond. Although the pre-sentence report points to an attempt by the 3rd Accused to evade arrest, the allegations are not credible as the 3rd Accused is said to have gone to Busia towards the end of August 2024 and returned home in September 2024. Despite the fact that his house had been razed down. Both Accused persons currently reside within the local jurisdiction of the court.
8. Regarding the alleged threats to the victim's family by the Accused persons, there is no evidence that such threats were made and in the event of such threats, the victim's family have a recourse with the security organs.
9. In the end, I find that there are no compelling reasons to deny the Accused persons bond. However, I note that the 4th Accused is said to have previously worked in Dubai and is therefore a holder of a passport. I therefore make the following orders:-
 - (a) The 3rd Accused is released on bond of Ksh. 300,000/= with one surety of similar amount.
 - (b) The 4th Accused is released on bond of Ksh. 300,000/= with one surety of similar amount. Additionally, the 4th Accused shall deposit his Kenyan Passport with the Deputy Registrar of this court to be kept in his custody until determination of this case.
10. Those are the orders of this court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF SEPTEMBER 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Mr. Maonga holding brief for Ms. Luyali for the 3rd and 4th Accused

Court Assistant: Polycap

