



**Republic v Leposo (Criminal Case E036 of 2024)  
[2025] KEHC 13365 (KLR) (Crim) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E036 OF 2024  
AM MUTETI, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SANINGO LEPOSO ..... ACCUSED**

**RULING**

1. The accused person in this case faces the charge of murder under section 203 as read with 204 of the Penal Code.
2. The accused person has applied for release on bail pending trial citing the provisions of Article 49 of the *constitution* of Kenya.
3. The accused person in his affidavit sworn on 12<sup>th</sup> May 2025 deposed that he is a Canyon by bud though his parents have their roots back in Tanzania.
4. He contends that he is entitled to release on bail since there are no compelling reasons to deny him the same.
5. The accused person in response to the state’s affidavit in opposition to bail maintains that he is not a flight risk and that he is willing to submit himself to the jurisdiction of this coach for trial and that he has no intentions to leave the country.
6. The accused person has also told the court that he has a permanent home in Kajiado where he was raised and that he has an uncle who is ready to stand surety for him.
7. The accused person denied trying to escape from Kenya as was alleged by the prosecution in the affidavit to oppose bond.



8. The accused person father pleaded with this court to consider releasing him on bail since bail is a constitutional right and that he is innocent until proven to be guilty. He cited Articles 49 (1) (h) and 50 (2) (a) of the constitution.
9. According to the accused he does not hold any travel documents that he is unlikely to leave the country.
10. The accused father deposed that he is willing upon release to be reporting to Kariobangi Police station, DCI Dandora, the local chief's office as the court may direct.
11. He also informed the court that the relatives are willing to avail a title to land to secure his liberty as a further demonstration that he is unlikely to abscond.
12. Counsel for the accused filed written submissions dated 7<sup>th</sup> July 2025 in which she urged the court to consider releasing the accused on bail since the prosecution had failed to establish any compelling reason to justify the denial of bail.
13. Counsel submitted that the reason cited by the prosecution in opposition to bill are flimsy and should not sway the court to deny the accused bail.
14. Counsel cited the case of Republic Vs. Joktan Mayende & 3 Others Criminal Case No. 55 of 2009 arguing that the prosecution must meet the constitutional standard of compelling reasons in order for them to ask this court not to grant bail.
15. It was further submitted that the prosecution had failed to adduce any evidence to show that the accused is a foreigner.
16. Further, counsel for the accused submitted that there was no proof tendered by the prosecution to show that the accused had attempted to flee the country.
17. The accused persons counsel cited the following authorities support their quest for bail:-
  - i. Republic Vs. William Kipkorir Kipchirchir & Another [2018] eKLR.
  - ii. Republic Vs Dwight Sagaray & 4 Others (2013) KEHC 3824 (KLR).
  - iii. Republic Vs. Qaasim [2025] KEHC 1911 (KLR).
18. The defence counsel concluded her submission by positing that even the court was inclined to believe that the accused is a foreigner, the court could still grant bail with suitable conditions to ensure that the accused returns for his trial.
19. The prosecution through Ms Dela prosecution counsel proposed the release of the accused person on bail containing that he is a flight risk and that if released on bail he might escape to Tanzania never to be found.
20. The state filed an affidavit shown by CPL. Abdi Ali Abdi on 5<sup>th</sup> June 2024 to oppose bail.
21. CPL Abdi deposed that the accused person when he was arrested, he was found with the deceased's voters card and his finger ring.
22. That evidence is yet to be tested by way of cross examination thus this court will not dwell much on it now.
23. The state's main reason for opposing bail according to CPL Abdi is that the investigator is apprehensive that if the accused is released on bail he is unlikely to return for trial and might flee to Tanzania.



24. The state has also urged the court to take into account the nature of the offence that the accused faces and the severity of the sentence should a conviction result.
25. The court called for a pre bail report in this matter and the probation department through Mercy. M. Kanyi filed the same on 17<sup>th</sup> January 2025.
26. The preamble off the pre bail report states the particulars of the accused and it is clear that his home county is indicated to be Kajiado Mbili Sub Location.
27. The pre-bail report further indicates that the accused person's larger family resides in Tanzania and that he was arrested as he attempted fleeing the country to Tanzania after the incident.
28. The report further indicates that the accused person's uncle holds a Temporary pass number 10498399 and is the person said to be willing to stand surety for the accused.
29. The report further indicates that the uncle to the accused holds no tangible property that he can post to secure the release of the accused on bail but that they are willing to marshal resources to bail him out should the court be inclined to admit him to bail.
30. Finally, the accused person is safe to have loose community ties in the country.

### **Analysis and Determination**

31. The right to bail is constitutionally guaranteed under article 49 (1) (h) of the [constitution](#).
32. All accused persons weather nationals of Kenya or foreigners are entitled to enjoy the right to bail irrespective of the gravity of the offense that they face.
33. The fact that the accused person is a foreigner is not ipso facto reason to deny him bail.
34. All persons are entitled to equal benefit and protection of the law without discrimination under Article 27 of the [constitution](#).
35. As such the foreigners who fall a foul of the law in this country are entitled to the same rights enjoyed by Kenyans and should not be subjected to any form of discrimination on account of their origin.
36. The offence of mother like all other offenses though grave is available.
37. The accused person is presumed to be innocent until proven guilty under Article 50 (2) (a) of the [constitution](#).
38. It is precisely for that reason that the attempt by the prosecution to introduce the fact of recoveries allegedly made during arrest that this court has stated that it would be premature to consider those facts since that evidence is yet to be received by the court and tested through cross examination.
39. It would be prejudicial to the accused if this court was to consider such a deposition at this stage.
40. The strength of evidence would fall for consideration as a compelling reason to deny bail once the hearing commences and witnesses testify and are subjected to cross examination.
41. The court will therefore not attach much weight to that deposition by CPL. Abdi at this stage.
42. The proper question to consider as a compelling reason at this stage is whether the accused person is a flight risk.



43. The only evidence that the prosecution relies on is in the affidavit of CPL. Abdi. At paragraph 13 of the Affidavit CPL Abdi states;-

“ 13. That the accused person is a Tanzania national, though he has no documentation, hence its believed he is illegally in the Country. He also has no known fixed place of abode as he used to sleep at his work place and at this time his employment is not guaranteed. For this fact we are apprehensive if he is released on bond, he would be a flight risk and defeat justice in this matter.”

44. The officer basically expressed fear that if the accused person is released on bail he might abscond.

45. The officer did not place before the court any evidence to support the fact that the accused is a Tanzanian national. That remains his word against that of the accused.

46. However, as I have already stated if any of this court was to believe the assertion by the investigation officer that the accused is a Tanzanian national that alone cannot be a compelling reason to deny bail.

47. To deny bail on that basis would be discriminatory and would offend the provisions of Article 27 of the constitution.

48. The primary consideration in applications for bail pending trial whether an accused person would stand up for his trial once released on bail. See R. Vs. Danson Mgunya & Another (2010) eKLR.

49. It is important to highlight in this matter that the affidavit of the investigation officer does not contain any allegation that the accused was arrested while attempting to cross into Tanzania. I picked on this deliberately because the pre-bail report has attempted paint that picture.

50. Any evidence on attempts to flee jurisdiction would bear weight if was presented by the investigation officer.

51. The social inquiry report remains a report and it is not by itself evidence.

52. The liberty of a person is precious and should only be denied in the clearest of cases where a compelling reason is advanced.

53. Apprehension by the prosecution that an accused person is a flight risk should be supported by the evidence. The prosecution must be able to discharge that onus on a balance of probabilities.

54. In the instant case I do not find any compelling reason to deny bill to have been established.

55. The prosecution has not satisfied the court that the accused person was arrested in the course of flight or is likely to flee the country.

56. In the end I allow the application for bail on the following conditions:-

- a. That the accused shall be released on a bond of Kenyan shillings 1,000,000 plus 1 (one) Kenyan surety of a similar amount.
- b. The accused shall provide 2 Kenyan contact person who shall undertake to produce the accused person should he be required by the court at any given time.
- c. The accused person, his surety and the two contact person shall each provide a mobile telephone that shall remain in active use throughout a period of the trial.
- d. The details permanent address of the accused in Kenya shall be provided and a letter from the local chief confirming the same.



- e. The accused person shall also provide to Deputy registrar of the court a copy of his national identity card since he says that he is a Kenyan.
- f. The accused person shall not leave Kenya for Tanzania or any other country during the pendency of the trial unless specifically authorized by this court.

56. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Habiba

Ms Ogega h/b Dela for the state

Ms Muyoka for the Accused

