



**Republic v Charo (Criminal Case E010 of 2025)
[2025] KEHC 15223 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E010 OF 2025
WM KAGENDO., J
OCTOBER 23, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

LEWIS KAZUNGU CHARO ACCUSED

RULING

Background

1. The accused person is charged with offence of murder contrary to Section 203 as read with Section 204 the Penal Code CAP 63, Laws of Kenya. The particulars of the charges are that on the 6th day of June, 2025 at Mferejini village, Kijipwa Sub-location, Kilifi South Sub-County, within Kilifi County murdered Fridah Changawa Julius.
2. On the 24th July, 2025 the accused person pleaded not guilty to the charge. Thereafter, the prosecution intimated that the Investigating Officer would be deposing an affidavit in opposition of the accused person's release on bail/bond, on allegations of attempted suicide while in custody but as at the time of making this determination the same remained pending.
3. Nevertheless, a Pre-Bail Information Report dated 25th August, 2025 by the Probation and Aftercare Service Office was filed on record.

Determination

4. Article 50(2) (a) of *the Constitution*, 2010 provides that:
“Every Accused person has the right to a fair trial which includes the right to be presumed innocent until the contrary is proved”.
5. Pursuant to the presumption of innocence until proven guilty, Article 49(1)(h) states that:



An accused person has the right; ...

- (h) to be released on bond or bail, on reasonable conditions pending a charge unless there are compelling reasons not to be released.

6. The compelling reasons are espoused in Section 123A of the Criminal Procedure Code which gives the parameters for the grant of the right to bail as follows:

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.

7. Further, the Judiciary's Bail and Bond Policy Guidelines, March 2015 at page 25 sets out the judicial policy on bail as follows:

“The following procedures should apply to the bail hearing:

- (a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or



- f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.
8. At least one or more of the above grounds ought to be proved to the satisfaction of the court. Mere allegations or possibility is not enough. It is worth reiterating that applicants have a constitutional to bail/bond unless there are compelling reasons why they should not. It would follow that the sole onus rests on the prosecution to avail credible reasons to that effect.
 9. In the persuasive case of *Republic v Francis Kimathi* [2017] Eklr, the court emphasized that right to reasonable bail/bond terms can only be denied if there are compelling reasons. The court in that case held that: -

“...There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in *the Constitution*...”
 10. It would therefore follow that the right to bail/bond is not absolute. In this case, a pre-bail report was filed in respect to the accused herein and the recommendations are not positive. In fact, the accused was deemed not suitable for release on bond terms. While a pre-bail report is not binding on the court, it assists it in informing the court on the social economic circumstances of the Accused while setting bail bond terms.
 11. The reasons proffered are that none of his close relatives were willing to vouch for his release nor did they commit to avail any information about him when sought to interview. Further, and more seriously the accused attempted to commit suicide while in police custody and was rushed to Mtwapa Health Centre where he was attended to and his life saved.

Also, the area assistant chief and the village elder stated that the community is still bitter and hostile following the alleged acts which led to the death of the deceased, thus there is fear of ambush and attacks on the accused person.
 12. It is therefore the duty of this court to balance the right of the accused to be released on bond pending trial against the need to safeguard his life and personal protection.
 13. In my view, the reasons availed for denial of bail are compelling, especially in so far as safeguarding the protection of the accused person to self and the community is concerned. Further, it is not lost to me that the accused person’s family is unwilling and evasive to bear any responsibility over the accused person’s safety, security and his compliance with the bail and bond terms. In the circumstances, I opine that the prosecution has provided compelling reasons to justify the denial of bail at this stage.
 14. I find that the right to bail pending trial is not an absolute right and may be denied if the court is satisfied that there are compelling reasons not to grant bail. In this case the prosecution has established compelling reasons. I therefore decline the application for bail/bond at this juncture.

Orders accordingly.



DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 23RD DAY OF OCTOBER 2025.

W.K. MICHENI JUDGE

In the presence of;

For the Applicant.....

For the Prosecution.....Mr Ngiri.....

Court Assistant.....Bebora.....

Signed by/for:

HON. LADY JUSTICE WENDY MICHENI

