



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Katana & 3 others (Criminal Case E009 of 2025)
[2025] KEHC 16679 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE E009 OF 2025
M THANDE, J
NOVEMBER 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

NICODEMUS SULUBU KATANA 1ST ACCUSED

SHARDRACK TABU KATANA 2ND ACCUSED

MATHIAS IHA KATANA 3RD ACCUSED

UHURU NGOKA SULUBU ALIAS TOM NGOKA SULUBU 4TH ACCUSED

RULING

1. The Accused herein are facing the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. By their Application, the Accused seek to be admitted to bond bail on just and reasonable terms pending trial. The grounds are that the Accused are of advanced age and some suffer from serious medical conditions requiring continuous care. Further that the remand environment is manifestly unsuitable for elderly sickly persons and that their continued detention may amount to a constructive death sentence.
2. The Application is opposed by the Respondent, vide an affidavit in opposition to bond bail sworn on 3.6.25 by Cpl. Mathias Kandie. The reasons given for opposing the application are that investigations revealed overwhelming evidence that the Accused planned and murdered the deceased and tried to conceal their roles in the murder; that the Accused are charged with a serious offence that carries a death sentence and thus there is a probability and incentive to abscond; that the Accused lives will be in danger if released as their community is still seething in anger after the brutal murder of the deceased.
3. In the pre-bail reports in respect of each of the Accused, the probation officer stated that from his inquiries, the Accused are well known in the community where they live with their families. The



families of the Accused and the victim are neighbours and have had a longstanding land dispute that remains unresolved. The victim's family is totally against the release of the Accused on bond since some witnesses have complained over visits by unknown people in their homes. Further that the local administrator stated that the matter is still fresh and has sparked a lot of interest in the community. There was apprehension over the safety of the Accused and that of witnesses. The report concluded that due to security concerns raised by the victim's family and community, the Accused were not suitable for release on bond.

1. The right to bond bail is guaranteed under Article 49(1)(h) of *akn ke act 2010 constitution the Constitution* which provides:
 1. An arrested person has the right
 - h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
5. *akn ke act 2010 constitution The Constitution* has not defined "compelling reasons". However, our courts have defined the term in various decisions. In *Republic v Joktan Mayende & 3 others [2012] eKLR, Gikonyo, J.* had this to say about compelling reasons:

And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by *akn ke act 2010 constitution the Constitution*.
6. The right to bail bond is not absolute. Where the court forms a strong opinion that the reasons given by the prosecution opposing bail bond are forceful and convincing, bail bond will be denied.
7. Section 123A of the Criminal Procedure Code (CPC) provides for instances when bail bond may be denied as follows:
 - (1) Subject to Article 49(1)(h) of *akn ke act 2010 constitution 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 and 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 fulfillment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of 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.
8. The Court notes that the 1st, 2nd and 3rd Accused are elderly, aged 71, 66 and 73 years respectively and it is stated that they are sickly. However, in the circumstances of the case, the offence with which they are charged is a serious offence and a life has been lost. Further, the Respondent has stated that their



investigations revealed overwhelming evidence that the Accused planned and murdered the deceased and tried to conceal their roles in the murder. Additionally, there is apprehension that the Accused's lives will be at risk given the anger within the community. As regards their health, the prison is able to ensure that they get the medical attention they require.

9. The averments of the Respondent and the contents of the pre-bail report remain uncontroverted as the Accused's advocate failed to file an affidavit in response thereto as he had indicated. The reasons advanced by the Respondent in opposition to the Applicant's bail bond application are both forceful and convincing.
10. The foregoing are in my view, compelling reasons as contemplated under Article 49(1)(h) of *akn ke act 2010 constitution the Constitution* to warrant denying the Accused bail bond. Accordingly, the Application is dismissed.

DATED, SIGNED and DELIVERED in MALINDI this 14TH Day of November 2025

M. THANDE

JUDGE

