

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MAKADARA**  
**CRIMINAL DIVISION**  
**HOMICIDE SECTION**  
**CRIMINAL CASE NO E044 OF 2025**

**REPUBLIC** .....

**PROSECUTOR**

**VERSUS**

**ABDIFATAH ABDIRASHID ABDULLAHI**

**Alias** **LEFTY** ..... **1<sup>ST</sup>**

**ACCUSED**

**MOHAMED ABDIRAZAK ABDISAMAD**

**ALIAS** **MASILVER** ..... **2<sup>ND</sup>**

**ACCUSED**

**RULING**

1. The accused persons are facing trial for the offence of murder contrary to section 203 as read with section 204 of the Penal Code the particulars of which were that on the night of 26<sup>th</sup> June 2025 at Galole street area in Eastleigh in Stareh Sub County within Nairobi County jointly with others not before court murdered Bashir Ahmed Abubakar, to which they pleaded not guilty.
2. In compliance with the provisions of Article 49(1)(h) of the Constitution, the prosecution filed an affidavit sworn on the 2<sup>nd</sup> October 2025 by PC Suleiman Mwatajiri opposing the release of the accused persons on bond , in which it was deposed that the incident herein occurred during the celebration of the Somali

independent day which was held by the Somali refugees in Kenya, that the accused persons herein attended, being Somali refugees in Kenya, in the company of the deceased among others.

3. It was contended that the dispute leading to the demise of the deceased occurred over the sharing of proceeds from the sale of a stolen mobile phone and that the second accused thereafter went back to the refugee camp at Kakuma from where he was arrested, while the 1<sup>st</sup> accused booked himself a room from Riverside Lodge with Eastleigh from where he was arrested.
4. It was contended that being refugees, the accused persons have no fixed abode in Kenya and were likely to be flight risk should they be released on bond.
5. In response to the said affidavit, the second accused filed a replying affidavit wherein it was deposed that he was a registered refugee in Kenya at Kakuma refugee camp and that his presence at the said camp was not an attempt to flee or evade arrest. He stated that he was not a flight risk as he occasionally travels to Nairobi and other parts of Kenya in pursuit of casual employment and other economic opportunities.
6. In compliance with the provisions of the Bond Bail policy guidelines the court called for and received the pre-bail reports, in which for the first accused it was stated that his father was a real estate broker at Eastleigh and that he used to support his parents from his taxi business. His family was supportive and willing to stand surety for

the same. On community ties, the local administration expressed no objection to the release of the accused on bond, while the Investigation Officer opposed his release over the likelihood of the same not attending court.

7. On the victims concern it was noted that the deceased was a young man aged 18years at the time of the death, and his death had impacted his family psychologically and financially. They strongly objected to the release of the accused on bond.
8. On the second accused, it was noted that his father was sickly and lives in Somalia while the whereabouts of his mother was unknown. The accused was born in 2002 at Kakuma refugee camp where he had spent the better part of his life until 2023 when he was brought to Nairobi by his Aunt, where he began to sell wears in the street until the time of his arrest. He is a refugee and his alien card are expired.
9. On community ties, the area Chief noted that they had not handled any incidents involving the accused and that his presence in the community did not pose any threat and were not opposed to his release on bond. His family in Kenya was very supportive of the accused and stated that they were willing to stand surety and make sure that the same attend court regularly. The investigating officer on the other hand opposed to the release of the accused on bond noting that he had fled

to Kakuma after the incident and was likely not to attend court.

#### SUBMISSIONS

10. On behalf of the Prosecution, Ms Ogweno submitted that the first accused was arrested at his hideout in a lodging on 26<sup>th</sup> June 2025 while the second accused went back to the refugee camp at Kakuma soon after the incident. It was contended that the accused persons do not have fixed place of abode in Kenya and were likely to disappear if granted bond.

11. On behalf of the accused persons, Mr. Abdinassar submitted that the 1<sup>st</sup> accused was a Kenyan citizen by birth with a national identity card who only booked himself in a lodging since he feared that his parents might have locked the gate. On the 2<sup>nd</sup> accused it was submitted that the same was a refugee registered with UNCR, having been born at Kakuma refugee camp where he went to school and has a fixed abode thereat.

#### **DETERMINATION**

12. Bond/bail is a constitutional right of every accused person under Article 49(1)(h) of the Constitution which can only be limited where there is compelling reasons advanced by the prosecution to the satisfaction of the court on a balance of probability.

13. What constitute compelling reasons has now been settled in Kenya, through the Bail/Bond Policy Guidelines and as captured by the Court of Appeal in Oyamo case that bond is a constitutional right of every

accused person under Article 49 and may only be limited if the prosecutions provide to court compelling reasons which the Court of Appeal in **Michael Juma Oyamo & another versus Republic [2019] eKLR** stated to be forceful and convincing as to make the court feel strongly that the accused should not be released on bond, thus the accused should not be denied bond on flimsy ground but on real and cogent grounds that meet the constitutional standards.

14. These reasons are captured in section 4.9 of the Bail and bond Policy Guidelines which were further captured in section 123A (1) of the Criminal Procedure Code

15. The court however should not lose sight of the fact that the purpose of bond is and remains to secure the attendance of the accused to court during the period of his trial and that the right to liberty should never be curtailed as was stated in **Republic versus NUSEIBA MOHAMED HAJI OSMAN [2018] eKLR**, denial of a constitutional right is not to be treated lightly and any claim made against an accused person towards curtailing his liberty must not be made on speculation and conjectures

16. In this matter the only reasons advanced by the prosecution for the denial of bond is that the accused persons have no fixed place of abode and were therefore flight risk.

17. The 1<sup>st</sup> accused has responded to the allegation thereon through his replying affidavit in which he

confirms that he is a Kenyan of Somalia extraction. He has provided his place of abode and family which has been confirmed through the pre-bail report. The second accused on the other hand is a registered refugee in Kenya which makes him a potential flight risk.

18. From the material provided to the court, I am satisfied that there are compelling reasons advanced by the prosecution on a balance of probability to enable the court deny the second accused bond at this stage, this being the fact that he is a refugee in Kenya whose alien card has since expired, the same has family ties outside the country and would easily find his way out of the jurisdiction of Kenya,

19. There is on the other hand no compelling reasons advanced to enable the court to deny the 1<sup>st</sup> accused bond. He has family ties in Kenya with fixed place of abode. His family is supportive and have confirmed their willingness to stand surety for the same. He has a means of livelihood which he ought to maintain during the period of his trial.

20. The 1<sup>st</sup> accused shall therefore be released on the following terms and condition:

- a) Bond of Kenya shillings Five Hundred Thousand (Kshs 500,000) with one surety of like amount
- b) In the alterative cash bail of Kenya shillings Two Hundred Thousand (Kshs 200,000) together with two recognized Kenyans.

c) The accused shall report to his area Assistant Chief after every thirty days at dates and time to be set by the said assistant chief until final determination of this cause.

21. And it is ordered

**DATED SIGNED AND DELIVERED THIS 18<sup>th</sup> DAY OF NOVEMBER 2025**

**J WAKIAGA  
JUDGE**

In the presence of

Court Assistant - Irene

Ms Ogweno for the Prosecution

Mr. Abdinassar for the accused persons.