



**Republic v Dahir (Criminal Case E002 of 2025)  
[2025] KEHC 17973 (KLR) (Crim) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E002 OF 2025  
MW MUIGAI, J  
NOVEMBER 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HUSSEIN MOHAMED DAHIR ..... ACCUSED**

**RULING**

1. The accused was charged with murder contrary to section 203 as read with Section 204 of the Penal Code.
2. The particulars of information read: On 4<sup>th</sup> dec 2024 at Corner house Ushirika area Starehe, the accused murdered Mohamed Jibril.
3. The accused took plea on 9/6/2025 when he underwent mental assessment and was found fit to plead and pleaded not guilty with the help of a Somali Interpreter.
4. The accused also made an oral application for bail further to his right under Article 49 (1) (h) of *the Constitution* and filed submissions as highlighted below.
5. The application was opposed through rival submissions filed by the prosecution and an Affidavit Opposing bail/bond dated 28/4/2025 Police Affidavit sworn by PC Gilbert K.langat as intimated by ODPP on 16/7/2025 but apparently the Affidavit was/is not on Court Record.
6. A Pre-bail Report was filed following directions taken before the court.



### **The Pre-bail Report.**

7. The accused is from Wajir County within the Republic of Kenya, he has a Kenyan Identity card and a Somali passport. The nearest centre is Habaswein and the accused resided as Eastleigh in Ushirika Estate for a year.
8. He is 32 years old and has a family in Somali where his wife and 4 children aged between 8 and 4 years reside
9. He came from Mogadishu and his parents died in 2006 and 2016. The accused was the son of the first wife and was survived by siblings, one is a Madrassa teacher in Wajir, Jamila is in Somali while Mohamed Dahir is a Somali trader his sister is also married in Mombasa where she resides.
10. The accused has loose ties with the family and the contacts of his siblings were not available. The accused lived with the deceased and others in a rental house at Ushirika. He has no criminal record and does not have history of jumping bail.
11. The accused understood the seriousness of the offence and severity of the sentence. His position is that Maslaha was done and the probation officer notes that he downplays the offence.
12. The community could not be reached and their statements are not on record.
13. The Probation Officer takes the view that the accused is a flight risk and that he holds a Somali passport, he does not have any ties within the Republic and the residential house was the crime scene. That the accused safety to return to the place is not guaranteed.
14. Parties filed written submission on the application.

### **The Prosecution's Submissions.**

15. The court is referred to the affidavit of Police Constable Gilbert K Langat dated 24/4/2025
16. The prosecution grounds of opposition and compelling reasons are the seriousness of the offence and the strength of the prosecution case.
17. That the offence carries a heavy penalty and the death sentence. The evidence against the accused is also overwhelming and comprises multiple eye witness accounts from the accused roommates. The court is referred to the statement of D1-D5 in the committal bundle and the accused admission to the investigating officer.
18. That the accused is a flight risk and there is also contradiction of his birth date indicated as 1/1/2002 and is 24 years in the identity card while passport indicates he is 34 years. That these discrepancies are serious and also raise question on his true identity and citizenship.
19. That the accused arrived Kenya in the year 2003 and he does not have a fixed abode or permanent family.
20. The prosecution submits that there is a possibility of absconding if bail is allowed, the prosecution refers to the cases of Republic –Vs- Margret Nyaguthiu Kimeu (2013) eKLR and Republic –Vs- Hassan Criminal CSE No E001 /24 .
21. The prosecution also argues that there is risk of witness interference. That D1-D5 were present during commission and D2 and D5 are juveniles who are vulnerable to intimidation. If released, the accused would be in the proximity of these witnesses and thus a real and justified apprehension that he may intimidate witnesses exists in the case.



### **The Accused Submissions .**

22. The accused submits that he has spent 11 months in remand since the day of arrest and had been held at Ruaraka police station for 5 days and later held at Pangani police station for 25 days .
23. That all offences are bailable and the claims are still alleged against him. That the presumption of innocence works in his favor and the strength of the prosecution case is not a ground when the case is yet to commence.
24. That the accused is a Kenyan national with an Identity card, the prosecution has also taken his passport and the accused is not a flight risk.
25. The accused has been in custody since November and there has been no contact with witnesses as none of the witnesses have visited the accused. That there has been no interference and assuming he would interfere with witnesses is judging him without a hearing.
26. The accused security is not at risk and the accused is not a threat to the society.
27. That denial of bail is contrary to public interest and public order. The accused urges that he enjoys equal rights as the general public and that unsubstantiated denial of his right to bond offends the rule of law.
28. The accused is also a breadwinner and is business man in Eastleigh. The accused is a man with a good standing within Eastleigh, he is known as a member of the Somali community with an aunty and uncle in Eastleigh Section 3.
29. Lastly, he did not decline to answer questions during Pre-bail inquiries, he is of Somali origin and was assisted by an interpreter during arraignment.

### **Analysis & Determination.**

30. I have considered the application and the prosecution grounds of opposition. The Pre-bail report and the indicated personal circumstances of the accused have been considered.
31. The key issue for determination is whether the accused will turn up for trial if bail is allowed.
32. Article 49 (1) (h) of *the Constitution* guarantees the right to bail, the right is further founded on the right of arrested and accused persons to be released on bail at any stage of the criminal trial.
33. The right can be limited where compelling reasons exist and are proved by the State beyond reasonable doubt.
34. In the case of Michael Juma Oyamo & another –Versus- Republic (2019) eKLR where the Court cited with approval the High Court decision in Republic versus Joktan Mayende and 3 Others Criminal Case No. 55 of 2009 compelling reason was defined as;  

“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 standards set by *the Constitution*.”
35. The Court considers bail as a fundamental right central to fair trial and freedom of movement, therefore curtailing this right must be a last resort and on substantiated grounds.



36. In Republic –Vs- Nuseiba Mohammed Haji Osman (2018) eklr which a persuasive decision, the Trial Court held that-

“Denial of a Constitutional right is not a matter to be treated lightly and therefore any claims made against an accused person aimed at curtailing. The Constitutional right to liberty must not be made on speculation or conjecture.”

37. In Nganga –Vs- Republic [1985] KLR 451 the court cited Republic –Vs- Abdi Abdalla Decosta [2018] KEHC 5982 (KLR) Chesoni J (as he then was) rendered himself as follows:-

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;

- a. the accused will fail to turn up at the trial or to surrender to custody or;
- b. the accused may commit further offences; or
- c. he will obstruct the course of justice.

The primary purpose for bail is to secure the accused person’s attendance to court to answer the charge at the specified time. I would therefore agree with Mr Karanja that the primary consideration before deciding whether or not to grant bail is whether the accused is likely to attend trial.”

38. Section 123 of the Criminal Procedure Code list compelling reasons which determine the accused right to bail while the bail and bond policy guidelines which corroborate Section 123 A (2) of the Code highlights the main consideration of bail as whether the accused will turn up for trial ...

39. Section 123 A (2) provides as follows:-

“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 certain conditions) it is likely that he would fail to surrender to custody;
- b. Should be kept in custody for his own protection.”
  1. In this case, the prosecution has listed, the severity of the offence and penalty, the accused being a flight risk and lacking a place of abode and no ties in Kenya and the risk of witness influence and intimidation.
  2. The accused is charged with murder which is indeed a serious offence with severe consequences. Section 123 of the Criminal Procedure Code lists seriousness of the offence as a compelling ground for court’s consideration.



3. It is trite that where the accused faces serious charges, the chances of absconding are heightened.
4. In the case of Republic –Vs- Ahmed Mohammed Omar & 6 Others |2010 ekLR, Ochieng J (deceased ) referred to the case of John Zenus Ungapake Tembo & 2 Others –Vs- The Director Of Public Prosecutions, M.S.C.A. CR. Appeal No. 16 of 1995, for the holding:
5. “In the case of John Zenus Ungapake Tembo (above-cited) the Supreme Court of Appeal, of Malawi, expressed itself thus;
 

“ ... where a person has been charged with an offence, the wheels of justice are set in motion and the accused person is expected to be prosecuted for the offence, and the law requires that the accused shall be available to stand his/her trial until the CASE is completed.” Their Lordships held that that was the paramount consideration when a court is giving consideration to an application for bail pending trial. The court went on to state that the seriousness of the charge brought against the accused person is one of the factors to be taken into consideration by the court. It was a holding of the court that;

45. Further that:

“Fear is a natural instinct in human beings, so that generally speaking, the more serious the Offence, a capital offence for example, and the sentence it may call for upon conviction, the greater the likelihood that the Accused person would be disposed to abscond.”

46. On the other hand, the accused is also presumed innocent of the charges until the case is ultimately determined in the trial. The prosecution has referred to witness statements recorded by the investigating officer .However, witness statements only inform court and the accused on the direction of the case and will be left for advanced stages of the trial where evidence is tested and substantial conclusions can be made.

47. In Republic –Vs- Dwight Sagaray & 4 Others (2013) KEHC 3824 (KLR) Ibrahim J referred to the Nigerian case of Alhaji Mujahid Dukubo – Asari –v- Federal Republic of Nigeria S.C. 20A/2006; and held that in Kenya, strength of the prosecution evidence is to be taken with caution and best considered at the defense stage . holding that:-

“I think that criteria (ii) above (the strength of the evidence which supports the charge) ought not apply in Kenya except where perhaps the application for bail is being made or renewed after the court has placed the accused on his defense. This is inconsistent with the principle that an accused is presumed innocent. Such criteria should be applied with great caution and only in exceptional circumstances like where there is statements that show that the accused was caught-red handed or where there is a lawfully admitted confession. Criteria (viii) above (the probability of guilt) appears to be in reference to where an accused has been placed on his defence.”



48. The strength of the Prosecution evidence is a matter of fact and law and is not for submissions at Pre-trial stage. In practice, this ground is raised at advanced stages of trial where the court and the accused have a grip of the case and keeping the accused in custody for the short period vis a vis releasing him is in question .
49. The Court finds that the fact that the accused faces a serious offence is a significant ground. The accused right to bail vis a vis the interest of the administration of criminal justice is balanced by giving stringent but reasonable measures of Bail/Bond.
50. The accused nuclear family is in Somalia where his wife and children reside and the children are of tender age. The accused has submitted that he is a known business man with good reputation at Eastleigh where his relatives also do business.
51. The Pre-bail report indicates otherwise, the accused is not in touch with his siblings and also that the siblings could not be reached. The Community views are also not recorded as they could not be reached. The accused also lived in a rental house at Eastleigh area where they lived with the deceased and others.
52. The accused also has dual citizenship which is doubted by the prosecution on claim that the contradiction on his date of birth in his passport and identity card is serious. This is an issue for the Investigating officer to investigate and advice the court. It is important that the full details of the accused personal information to be established for the wider interest of criminal administration.
53. It is particularly essential in the application for bail where all information should be accurate to avoid chances of absconding or flight risk.
54. In the case of Republic –Vs- Dwight Sagaray & 4 Others (2013) KEHC 3824 (KLR) the court also considered possibility of being a foreigner being a flight risk and held that it was a serious ground and that “ panacea for possible flight is not to automatically deny bail but to impose stringent conditions that would attract attendance at trial.
55. The accused has not indicated whether he would be going back to Eastleigh. From the prosecutions contestations and the justice of the case, residing at Eastleigh where witnesses reside or engage in day to day affairs would be detrimental to the administration of justice in this case. There is no doubt that coming into contact with witnesses is a risk in this case. Whether the accused will intimidate or influence what they will say in court is a matter of fact and evidence . However, I still find that measures can be taken to avoid that risk and an alternative residence is to be located.
56. In the event he would have to relocate to Somali or visit his family during the trial, the court must also prescribe measures that would mitigate against being a flight risk. Whether there are sureties and close relations that would assure his attendance, whether collateral would be available and most important whether the accused has economic and family ties to restrict him within the country.
57. Putting in mind all considerations highlighted, I find that the accused will not turn up for trial and that he is not eligible for bail at this stage.
58. The Pre-bail Report indicates loose ties with his family and the Accused had no contact with any of his siblings or other relative and none of his close family members could be reached since he provided no contacts. The contacts he gave of distant Aunt and Uncle were reached on phone and were aloof and distanced themselves from the matter



59. Victim's family relatives could not be reached or traced and hence were not interviewed; Community ties were not established and no contacts were willing to stand surety for him. No fixed address save for the house where the offence occurred a crime scene.
60. The Accused person stated that he was unable to communicate effectively during the interview due to language barrier he required a Somali interpreter. This is borne out by the Court record. The next interview a Somali Interpreter be availed through Deputy Registrar Criminal Division.

### **Disposition**

The application for now is declined with further orders that:-

1. The investigating officer shall file affidavit and attach evidence of the accused birth and identification details.
2. The prosecution shall line up key (minors) witnesses identified in the submissions to testify on priority basis before renewal of the bail& bond Application
3. The Police Affidavit opposing bail/bond shall be availed as part of the Court record.
4. Avail Somali Interpreter through Deputy Registrar Criminal Division in the next interview.

**DELIVERED DATED & SIGNED IN OPEN COURT AT CRIMINAL DIVISION NAIROBI THIS 24/11/2025 VIRTUALLY/PHYSICALLY.**

**M.W. MUIGAI**

**JUDGE**

