



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Lekilit (Criminal Case E008 of 2025)
[2025] KEHC 17958 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E008 OF 2025
AK NDUNG’U, J
DECEMBER 3, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOEL LEKILIT ACCUSED

RULING

1. The Accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the 25th June 2025 at Eleri village in Laikipia East Sub-County within Laikipia County, jointly with another not before court murdered Maratei Lemosian Sokooyo.
2. The state has opposed bail based on averments contained in an affidavit sworn by Richard Kirui, one of the investigating officers in the matter.
3. The main contention is that the Accused and the accomplice fled from the locality of the crime and the accused was only arrested at Kisima in Samburu County a year later after a tip off from the public.
4. It is stated that the accused has no permanent abode and that his release is likely to disturb public order since the local community is still reeling from the effects of the murder.
5. In reply, the accused has deponed that Article 49(1)(h) of *the Constitution* guarantees every arrested person the right to be released on bond or bail on reasonable conditions, unless there are compelling reasons to deny such rights.
6. That the pre-bail report filed before this honourable court confirms that he is permanently settled at Eleri Laikipia County, where he lives with his wife and six children and that he is the breadwinner for his family.



7. That the same report further describes him as a well-mannered individual known to the community and not a person of violent disposition, which negates any suggestion that his release would disturb public order or peace.
8. That it is not true, as alleged, that he has no permanent place of abode or familial ties. My home and family are well-known in Eleri and he had every reason to remain within the court's jurisdiction to clear his name and continue supporting his family.
9. That the allegation that he evaded arrest for one year is misleading. He did not go into hiding but continued to live within the general locality since the occurrence of the alleged offence and his eventual arrest was without resistance. He has fully cooperated with law enforcement officers since his arrest.
10. That he is not a flight risk. He has deep family and communal ties within Eleri and he is willing to abide by any conditions that this honourable court may impose, including reporting to the local police station or restricting his movement if required.
11. That he undertakes not to interfere with any prosecution witnesses directly or indirectly. He is aware of the seriousness of the charges and the need to allow the case to proceed without hindrance.
12. That the allegations that he might interfere with efforts to arrest an alleged accomplice is speculative and unsubstantiated. He has no control over any ongoing investigations and would not jeopardise his own case by engaging in such acts.
13. That the fear of public disorder or possible revenge attacks is not a compelling reason in itself or deny bail, as the same can be managed through appropriate bond terms, including restrictions on contact with the deceased's family or residence within a specified area.
14. That he is ready and willing to attend all court sessions and abide by all conditions that this Honourable court may impose upon his release.
15. A pre-bail report has been filed. The social inquiry officer found the Accused unsuitable for release on bail.
16. Article 49(1)(h) of *the Constitution* provides that:-

An accused 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.
17. The Constitution does not define what qualifies under the term "compelling reasons". The ordinary meaning according to Thesaurus English Dictionary of the word "compelling" is forceful, convincing, persuasive, undeniable and gripping. From this plain meaning it is apparent that the court would consider any fact or circumstances brought to its attention by the prosecution which would convince the court that the release of the accused would not augur well for the administration of justice or for the trial at hand.
18. The court would therefore in my view consider the circumstances of each case using commonly known criteria, primary of which is whether or not the accused will attend trial.
19. While *the Constitution* does not identify what qualifies under the term "compelling reasons", Section 123A of the Criminal Procedure Code gives the parameters for the grant of the right to bail as follows:
 - (1). Subject to Article 49(1)(h) of the 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.

20. In bringing clarity and certainty in the determination of the question whether or not to grant bail, The Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 sets out 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.
21. Thus, in constitutional and statutory context, the he right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since the Constitution expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
22. What the compelling reasons are, however, depends on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. The mere fact therefore that the offence with which an accused is charged carries a serious sentence is however not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond appearing for trial.



23. The central consideration for the court in addressing the issue of bail is whether the Accused will avail himself for trial and whether or not a free and fair trial can be achieved notwithstanding the release of the accused on bond.

24. I associate myself with the view expressed by Muriithi, J in *Kelly Kases Bunjika vs. Republic* [2017] eKLR that:

"It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that "the accused person is likely to fail to attend court proceedings". The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his "constitutional right to be granted Bond/Bail on reasonable and favourable terms."

25. The determination whether or not a free and fair trial is possible brings into focus the circumstances of the Accused and those of potential witnesses. If it is demonstrated that the Accused is likely to interfere with witnesses, this is a proper basis for denial of bail as it goes to the root of administration of justice in the matter. The burden is on the prosecution to prove such circumstances as would render a free and fair trial impossible if the accused is so released.

26. Even where bail is granted, the terms imposed ought not be punitive and the same should be for the purposes of ensuring the attendance of the accused at the trial. The terms should not necessarily be pegged on the sentence that might apply should there be a conviction.

27. Ultimately, it is therefore my view that the discretion to grant bail and set the conditions rests with the court. In exercising its discretion, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. As the fundamental consideration is the interests of justice, the court will lean in favour of liberty and grant bail where possible, provided the interests of justice will not be prejudiced by this.

28. The court in *S vs. Nyaruviro & Another* (HB 262-17, HCB 122-17, XREF CRB 1454A-B-17) [2017] ZWBHC 262 (31 August 2017), comprehensively summarized the grounds to be established for bail to be denied. It was stated;

"The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established where there is a likelihood that the accused, if he or she were released on bail, will

- (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or
- (ii) not stand his or her trial or appear to receive sentence; or
- (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system... the ties of the accused to the place of trial; the existence and location of assets held by the accused; the accused's means of travel and his or her possession of or access to travel documents; the nature and gravity of the offence or the nature and gravity of the likely penalty



therefore; the strength of the case for the prosecution and the corresponding incentive of the accused to flee; the efficacy of the amount or nature of the bail and enforceability of any bail conditions; any other factor which in the opinion of the court should be taken into account...In considering any question... the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely

- (i) the period for which the accused has already been in custody since his or her arrest;
- (ii) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
- (iii) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;
- (iv) any impediment in the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;
- (v) the state of health of the accused;
- (vi) any other factor which in the opinion of the court should be taken into account... In assessing the risk of abscondment, the established approach is for the court to assess this risk by first assessing the likely degree of temptation to abscond which may face the accused.

To do this, one must consider the gravity of the charge because quite clearly, the more serious the charge, the more severe the sentence is likely to be. In *S v Nichas* 1977 (1) SA 257 (C) it was observed that if there is a likelihood of heavy sentences being imposed the accused will be tempted to abscond. Similar sentiments were stated in *S v Hudson* 1980 (4) SA 145 (D) 146 in the following terms; "The expectation of a substantial sentence of imprisonment would undoubtedly provide an incentive to the accused to abscond and leave the country." In other words, the possibility of a severe sentence enhances any possible inducement to the accused to flee. See also *Aitken v AG* 1992 (2) ZLR 249 and *Norman Mapfumo vs. The State* HH 63/2008... The other relevant factor to be considered is the relative strength of the state's case against the accused on the merits of the charge and therefore the probability of a conviction. It stands to reason that the more likely a conviction, the greater will be the temptation not to stand trial. Despite being the fulcrum of the application, this factor must be considered together with other factors in the case."

29. In the instant matter, one of the grounds that has been established is that the Accused may not stand his or her trial or appear to receive sentence. This is informed by his past conduct. After the crime was committed, the Accused who is said to have been with an accomplice during the commission of the offence disappeared from his usual place of abode and it he was arrested a year later at Kisima in Samburu County following a tip off. This court takes judicial notice of the geographical positioning of



Ereri in Laikipia county and Kisima in Samburu County and the tracing of the Accused at Kisima and his eventual arrest is a clear indicator of someone who was on the run. He makes no attempt to explain his relocation to Kisima and the long period before he was arrested clearly shows he was evading arrest.

30. If he could act that way when he was facing no charges, am persuaded that the likelihood to abscond now that capital charges have been framed against him is real. He is a flight risk. This is a compelling reason enough to curtail his constitutional right to bail. Bail is denied.
31. In the interest of justice, the trial shall be expedited to avoid a long incarceration of the 4th Accused during the pendency of the trial.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 3ND DAY OF DECEMBER 2025.

A.K. NDUNG’U

JUDGE

