

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION CASE NO. E139 OF 2025

FARAH OSMAN HUSSEIN.....
APPLICANT

VERSUS

REPUBLIC
RESPONDENT

(Being revision application from the ruling of Hon. J. Omwange (PM) delivered on 3-11-2025 in Garissa CM'S court criminal case No.e488 of 2025)

RULING

1. The accused person was charged before Garissa CM's court with various offences interalia; causing grievous harm contrary to Section 234 of the Penal Code; Being in possession of a firearm without a firearm certificate contrary to Section 4(2) (a) as read with Section 4(3) (a) of the Firearm Act Cap 114 Laws of Kenya; Being in possession of ammunitions without certificate contrary to Section 4(2)(a) as read with Section 4(3)(a) of the Firearm Act Cap 114 Laws of Kenya; Being in possession of a magazine without certificate contrary to Section 4(2) (a) as read with Section 4(3)(a) of the Firearm Act Cap 114 Laws of Kenya, and Malicious damage to property contrary to Section 339(1) of the Penal Code.

2. He pleaded not guilty to the offence and therefore prayed for his release on bond. The application was however opposed by the prosecutor relying on information deposed in an affidavit sworn by PC Alaxander Nyamu the investigating officer stating that upon commission of the subject offences, the accused went into hiding; accused has no known place of fixed abode and if released he will jump bail; he is a flight risk and general public safety was at risk if released.
3. In its ruling dated 3rd November, 2025, the court declined to grant bond to the accused person at that stage on grounds of being a flight risk and likelihood of interference with witnesses. However, accused was at liberty to renew his application for bond after the testimony of key prosecution witnesses or upon demonstration of a change in circumstances.
4. Aggrieved by the court's ruling, the applicant filed a notice of motion dated 6th November, 2025 seeking;
 - (i) **That the court be pleased to certify the application as urgent and be heard exparte in the first instance.**
 - (ii) **That pending the hearing and determination of the application, the applicant be admitted to reasonable bail/bond terms as the court may deem fit.**
 - (iii) **That the court be pleased to set aside and or review or vary the ruling delivered on 3rd November 2025 by Hon. Jackson Obuya Omwange (PM) refusing/denying the applicant bail and bond for a cognizant offence and in place grant the applicant bail and or bond terms that are reasonable pending trial.**

(iv) That the court do issue such further or other orders as it may deem fit and just in circumstances of this case.

(v) That the costs of the application do abide the outcome of the application.

5. The application is supported by an affidavit sworn by Farah Hussein Osman on 6th November 2025 deposing that he is not a flight risk as he has a family which depends on him. He averred that he was already on bond in criminal case number E482 of 2025 before Garissa law courts to which he has religiously attended court as required. That the trial court did not consider his submissions when delivering its ruling.
6. During the hearing of the application, Mr. Duwane advocate for the applicant submitted that the applicant had been charged also in Garissa Cr. Case No. E482/2025 to which he was released on bond. He found no good reason to deny the applicant bond on allegations that he was a flight risk and that he would interfere with witnesses. He contended that there was no proof that the applicant was a flight risk as he was a person with a fixed abode. That the applicant was in business of buying and selling cows hence had a right to liberty.
7. On the other hand, the respondent opposed the application contending that the applicant was seeking revisionary powers to overturn the ruling delivered on 3/11/25. That the ruling by the trial court was clear and there was no illegality or irregularity committed. On the right to bail, counsel contended that Article 49 is clear to the extent that bail is not absolute. That an accused person has a right to bail unless there are compelling reasons not to be released. Learned counsel submitted that there was no justification for the release of the accused person based on the circumstances of another case. That the accused was at

large after committing the offence and the court ruled that he could be admitted on bond after witnesses testify.

8. I have considered the application herein, objection thereof and submissions by both parties. The only issue for determination is whether there are compelling reasons to deny the respondent bail pending trial.
9. This court has been moved for revision orders which is anchored under section 362 and 364 of the CPC as well as Art 165 of the constitution of Kenya.
10. Article 165(6) does bestow the high court with supervisory powers upon the subordinate courts as well as any person, body or authority exercising a judicial or quasi -judicial function but not over a superior court. Sub-article (7) goes further to provide that; for the purposes of clause (6), the high court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
11. The above provision is further amplified by Sections 362 and 364 of the CPC. Section 364 provides thus;

Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

12. Section 362 further provides;

Power of High Court to call for records-

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

13. The right to bail is a constitutional right provided under Article 49 (1) (h) of the Constitution which provides that every arrested person is entitled to be released on bail or bond on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.

14. In bail or bond applications, therefore, the primary consideration must always be the ability of the accused to attend trial. The only exception remains where compelling reasons are demonstrated. Ibrahim, J (as he then was) in **Republic v Danson Mgunya & Another [2010] eKLR** described the right to bail as an “inalienable right” by holding that;

"The result of the foregoing is that a murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."

15. Similar position was held by Kimaru J as he then was in **Hillary Wachira Wanjiku v Republic [2020] eKLR** where he held as follows;

“This court agrees with Mr. Wandugi that as a matter of constitutional imperative, court should lean towards granting accused persons bail pending trial unless irrefutable compelling reasons are placed before the court by the prosecution”

16. It is trite that although bail is a right under the Constitution, the same is not an absolute right but rather a right subject to certain conditions. Among such conditions, guidance can be drawn from Section 123 of the CPC and judiciary bond and bail policy guidelines of 2015.

17. Section 123 of the CPC provides;

Exception to right to bail

(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 fulfillment 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.
[Act No. 18 of 2014, Sch.]**

18. Whether to grant bail or not is a matter of discretion by the trial court. The same should however be exercised judiciously and not whimsically or capriciously. See **Republic v Sifuna (Criminal Case E014 of 2023) [2023] KEHC 22379 (KLR) (22 September 2023)**.
19. The judiciary Bail and Bond Policy Guidelines of 2015 thus underpin the right to reasonable Bail and Bond terms. That Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and presumption of innocence. To achieve the objective of release of one on bail, the bail or bond terms should not be unreasonable. They should not be excessive or far greater than is necessary to guarantee the accused person liberty pending his or her trial.
20. The bail aspect pending trial is principally anchored on the understanding that an accused person is deemed innocent until proved guilty. This is a constitutional imperative in compliance with Article 50(2) (a) of the Constitution. It is trite that courts should as much as possible avoid granting orders that will most likely promote detention before trial.
21. There is no dispute that the applicant is currently on bond in criminal case number e482 of 2025. No issue regarding him being a flight risk was raised nor has he ever absconded court attendance. In fact, the applicant was arrested on 18-9-2025 and arraigned in court on 2-10-2025. He was then released on bail. In respect to this case no. e488 of

2025, he was also arrested on 18-9-2025 and arraigned in court on 7-10-2025 a difference of two days from the date he was granted bail in Cr case No. E482 of 2025. How could circumstances have changed in two days to deny accused person bond yet granted bond two days earlier. It does not add up.

22. Similarly, the issue of interference with witnesses was not demonstrated as none of those witnesses has come forward to claim influence or threat.
23. Regarding the accused not having a known place of fixed abode, the same issue was not raised in criminal case number e482 of 2025. The applicant stated that he was a businessman with a family. This ground is an afterthought. On the question of public safety, the court held that owning a gun can pose security threats to society. However, accused was facing a similar charge in e482 of 2025 and the same claim was not raised.
24. In a nut shell, there is no justification in denying the accused bail in one case and deny him in another yet circumstances have not changed in criminal case No.E482 of 2025. How could circumstances have changed in two days to deny accused bail.
25. Accordingly, it is my finding that the application is merited and the same is allowed with orders that;
 - a) **The orders of the trial court dated 3-11-2025 denying the accused bail are hereby set aside.**
 - b) **The accused shall be released on a bond of kshs 1,00,000/= with one surety of similar amount**
 - c) **The trial court's file be returned to the trial court for hearing to continue as scheduled**

Dated, signed and delivered this 19th day of December 2025

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J. N. ONYIEGO
JUDGE