

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CRIMINAL CASE NO. E033 OF 2025

**REPUBLIC.....PROSECUTION
COUNSEL
VERSUS**

**STEPHEN
OJODE.....ACCUSED** **OKOTH**

RULING

1. The accused person has moved this Court seeking to be admitted to bail pending trial pursuant to *Article 49(1)(h)* of the *Constitution*, which guarantees every accused person the right to be released on bond or bail on reasonable conditions unless there exist compelling reasons that would necessitate their continued detention.
2. This Court is therefore required to examine whether the prosecution, which opposes the application, has discharged its constitutional burden of demonstrating such compelling reasons, bearing in mind that bail is a right and its limitation must be justified through clear, cogent and admissible evidence.
3. The onus to prove the existence of such compelling reasons lies with the State (see **Republic v Kennedy Ochieng Kisakwa [2013] eKLR**) and the standard of proof that the reasons presented meet the compelling reasons test is on a

balance of probabilities (see **Walford Ngugi & 2 others v Republic [2017] eKLR** and **Republic v Ahmed Mohammed Omar & 6 others [2010] eKLR**).

4. As was held in the case of **Republic v Fredrick Ole Leliman & 4 others [2016] eKLR** the availability of bond and/or bail under *Article 49* of the *Constitution* is not an absolute right. In other words, the right to liberty is among those rights that may be limited under *Article 24* of the *Constitution*, through denial of bond where compelling reasons are provided.
5. In the present matter, the prosecution has not filed any affidavit or other formal evidence in opposition to the application and relies solely on statements contained in the pre-bail report to the effect that the accused person has a history of mental illness and that, owing to that history, his family members are uncertain that he will attend court if released on bond and that he may attack witnesses.
6. The Court notes that the prosecution's position is not supported by any sworn deposition, medical documentation or investigative material that would substantiate the alleged mental instability or establish a nexus between the alleged condition and the likelihood of the accused absconding or interfering with witnesses.

7. The pre-bail report, though a useful tool in providing social background information to assist the Court in tailoring appropriate bond terms, is not in itself a substitute for the evidentiary burden placed upon the prosecution and cannot operate to diminish constitutional rights in the absence of corroborative evidence.
8. The Court must therefore treat the contents of the report with circumspection, particularly where the information touching on the accused is adverse, unverified and ultimately contested, since unsworn statements gathered through informal interviews are not a proper legal basis upon which to curtail personal liberty.
9. The Court further observes that there is on record a duly filed psychiatric report from a qualified medical practitioner, which affirms that the accused person is mentally fit to stand trial and this report stands unchallenged by any contrary medical evidence from the prosecution.
10. The existence of this formal medical evaluation, which directly contradicts the generalised and unsubstantiated remarks contained in the pre-bail report, significantly weakens the prosecution's claim that the accused's mental state renders him an unsuitable candidate for bail.

11. In the absence of any affidavit explaining why the accused's alleged history of mental illness presents a present, real and substantial risk of absconding, particularly in light of the professional medical finding of fitness, it would be speculative and unjustifiable for the Court to rely on bare assertions to deprive the accused of his constitutional entitlement.
12. It is well settled that compelling reasons must be more than vague apprehensions or subjective fears held by family or community members and must instead consist of demonstrable risks such as proven past absconding, credible threats to witnesses, likelihood of interfering with investigations or any other factor supported by evidence that satisfies the Court that the accused's release would impede the administration of justice.
13. In the present matter, neither the prosecution nor the pre-bail report points to any specific conduct of the accused person that would indicate a propensity to abscond nor is there evidence of any prior failure to attend court or any acts of obstruction. The mere concern by family members, based on an alleged past condition that has been medically evaluated and presently ruled out, does not rise to the threshold of a compelling reason envisioned under *Article 49(1)(h)*.
14. In the totality of the circumstances, the Court finds that the prosecution has not established any compelling reason to

justify the denial of bond, the opposition having been predicated solely upon unverified assertions within the pre-bail report, which stand contradicted by a formal psychiatric evaluation and unsupported by any sworn evidence.

15. Consequently, the accused person is hereby admitted to bond. He may be released on a bond of Ksh.600,000/- with one surety of similar amount.

16. The hearing of the matter will be on 27th April, 2026.

DELIVERED (virtually) DATED and SIGNED this 1st day of December, 2025.

JOE M. OMIDO

JUDGE

APPLICANT: Present.

PROSECUTION COUNSEL: **Ms. Muema.**

DEFENCE COUNSEL: **Ms. Odipo.**

COURT ASSISTANTS: **Mr. Ngoge & Mr. Juma.**