

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NUMBER E002 OF 2026

REPUBLIC.....PROSECUT

OR

VERSUS

MOHAMED ADEN OMAR.....

SUBJECT

MOHAMED IBRAHIM MOHAMED..... 2ND

ACCUSED

RULING

1. The subject together with the second accused herein are charged with the offence of murder contrary with section 203 as read with section 204 of the penal code. Particulars are that on 19th day of January 2026 at around 1100 hours at Saka area in Balambala Sub-County in Garissa County, within the republic of Kenya they murdered Deko Adhan Sigale.

2. Having denied the charge, a plea of not guilty was entered. Subsequently, they applied for bail which was vehemently opposed by the prosecution based on the investigating officers' affidavit of objection citing grounds that; the subject and accused are people known to the witnesses hence likely to interfere with witnesses; given the seriousness of the offence, they are likely to abscond; investigations are ongoing hence likely to interfere; public interest and public safety'

3. Mr. Owino basically maintained that bail is a constitutional right and that the grounds advanced are speculative
4. Having ordered for filing of pre-sentence report, the same is unfavourable on grounds that the security of the subject and the accused person is at risky given that the community and the victim's family is still bitter. The report further indicated that the family members to the accused and the subject are of a similar view that bail for now is not appropriate hence should be deferred.
5. I have considered the application herein and objection thereof. The only issue for determination is whether there are compelling reasons to deny the accused and the subject herein bail.
6. Under Article 49(1)(h) of the constitution, every accused person is entitled to bail pending trial unless there are compelling reasons not to. The judiciary bond and bail policy guide lines 2016 does echo the constitution. Section 123(A) of the CPC does list circumstances under which a trial court can deny an accused person bond. For avoidance of doubt, I wish to reproduce the aforesaid Section.

“ 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.

7. Ideally, the burden is on the prosecution to establish that there is/are compelling reasons to justify denial of that constitutional right. This is anchored on the ground that an accused person is deemed to be innocent until proved guilty and that one should not be denied bail without justification thus condemning such person to detention before trial.

8. In the case of **Nganga v Republic [1985] KLR 451** Chesoni J as he then was rendered himself with regard to grant of bail 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."

9. In this case, the investigating officer gave varied reasons to justify denial of bail. First is the argument that the accused and subject are charged with a serious offence. That is a general statement which does not oust the constitutional imperative that all offences are bailable. As to interference with investigations and witnesses, nothing tangible was advanced to prove that the fear is palpable.
10. However, the investigating officer and the pre-sentence report are in agreement on one ground; that is the volatile situation on the ground and the safety of the subject and the accused. Even their family members are urging that bail for their release be deferred. Public interest and safety of an accused is a justifiable ground compelling enough to deny an accused bail. On account of this ground, am compelled to deny the accused and the subject bond at this stage. They are however at liberty to renew their application after some time preferably after key witnesses have testified.

11. Accordingly, the application for bail is rejected. Hearing to be fast tracked to enable the accused and the subject get to know their fate sooner than later. On account of the subject's age, he can be remanded at Garissa police station CPU pending trial.

Dated, signed and delivered this 16th day of March 2026.

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J. N. ONYIEGO

JUDGE