



**Republic v Aluchiri & another (Criminal Case E889 of 2025)
[2025] KEMC 169 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEMC 169 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E889 OF 2025
PA NDEGE, SPM
JULY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

FREDRICK ALUCHIRI 1ST ACCUSED

OMAR GAITHO 2ND ACCUSED

RULING

1. The matter before court is a case of Preparation to Commit a Felony contrary to section 308(1) of The Penal Code (Cap 63). It is alleged that on the 27/04/2025, at around 00.45 am, at Bondeni area in Nakuru East sub-County within Nakuru County, the accused persons were jointly found while armed with dangerous weapons namely 1 knife and 1 sword respectively in circumstances that indicated that they were so armed with intent to commit a felony.
2. Whereas the 1st accused person has since been able to secure a surety for his release on a bond of Kshs.200.000/-, the 2nd accused is still in remand custody. Meanwhile the hearing of this matter has so far commenced with only one prosecution witness so far testifying partially.
3. On 21/07/2025, this matter came up for a routine mention. The 2nd accused person prayed for bond review. The prosecution did not oppose the application. I am cognizant of the provisions of the Constitution under Article 49 (1) (h), which gives the accused parties the right to be released on either bail or bond on reasonable conditions awaiting a charge or trial unless the court has compelling reasons to refuse to grant the same. Additionally, under the Criminal Procedure Code, section 123 (2), the amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive. Section 123A of the same code however lists down some of the considerations that the court may take into account when setting bond or bail terms. The section provides as follows: -

123A. 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.

4. In the case of *Republic v Peter Maina Mwangi* [2025] KEMC 69 (KLR), the court emphasized on the principles of bail and bond basing key consideration on the instances where bail and bond is granted and where they can be denied. The principle of bail and bond is basically guided by key considerations such as the right to be presumed innocent unless proven guilty, the accused person's right to liberty, the accused obligation to attend trial, right to reasonable bail and bond terms, balance between the rights of the accused person and the interests of justice and consideration for the rights of victims.

Determination

5. Following the application to review the bond terms, and there being no objection from the prosecutions, I do hereby review the terms herein Kshs. 100,000/= with 1 surety of a similar amount, for the 2nd accused person.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 28TH DAY OF JULY, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of:

Court interpreter: Janet

Prosecution Counsel: Macharia

1ST Accused Person: Present

2ND Accused Person: Present

