



**Republic v Jatan & another (Criminal Case E011 of 2024)
[2025] KEHC 3842 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3842 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE E011 OF 2024
DR KAVEDZA, J
MARCH 26, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

RAMADHAN HAMED JATAN 1ST ACCUSED

ABDI HUSSEIN BARISO 2ND ACCUSED

RULING

1. The accused persons were charged with the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#), Cap 63 Laws of Kenya. The particulars of the offence are that on 27th July 2024 along Masai-West area in Langata Sub-County within Nairobi County murdered no. 101456 PC Joseph Mbuthia. They pleaded not guilty.
2. They have now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. In opposition, the prosecution filed an affidavit dated 11th November 2024 sworn by CPL Robert Nyang'au. He averred that after the incident, the accused persons fled the scene of crime but were arrested by members of the public. They have no fixed abode, gainful employment or known familial ties. Further, the 2nd accused is not registered with the National Registration Bureau making it difficult to trace him should he abscond. Finally, their safety is not guaranteed and maybe subjected to mob justice if released.
4. In response, the 1st accused and 2nd accused contended that they both reside in Kabiria, Dagoretti within Nairobi County. They undertook to present themselves in court as and when required to. They urged the court to grant reasonable bail terms.



5. I have considered the application, the opposition raised, the responses made and the applicable law. The issue for determination is whether there are compelling reasons to warrant the denial of bail.
6. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
7. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
8. The pre-bail reports on record, indicated that the accused persons lack a fixed abode and the existence of multiple residences linked to them with strong ties to counties that border the country. On the other hand, the family of the victim are opposed to the application for bail.
9. The impression that the court gets from the probation report is that the accused persons have no fixed abode and are a potential flight risk. They are therefore likely to abscond if released on bail/bond. Accordingly, that is a sufficient basis of denying the accused persons bail pending trial.
10. Accordingly, the accused persons application for bail is dismissed at this stage.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

