



**Republic v Moseti & another (Criminal Case E004 of 2025)
[2025] KEHC 5371 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E004 OF 2025**

**JK SERGON, J
APRIL 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID MOSETI 1ST ACCUSED

EDNA KWAMBOKA ENARIKO 2ND ACCUSED

RULING

1. David Moseti and Edna Kwamboka Enariko the Accused herein were charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). The Particulars of the information are that on 20th day of January, 2025 at Kamolok Village, Soin Sigowet Sub - County within Kericho County, the accused persons murdered Stanley Langat.
2. The accused according to court records were arrested and arraigned in court. The accused were subjected to a mental assessment and found to be of sound mind and fit to stand trial. The accused pleaded not guilty to the charge of murder.
3. Ms. Kirui, learned counsel for the accused, applied for the accuseds to be released on reasonable bond terms. The prosecution did not oppose the application. The court directed for pre-bail reports to be prepared and filed by the county probation officer.
4. The county probation officer filed a pre-bail report, in respect to David Moseti. In the said report, it is noted that whereas the accused alluded that his family members are ready to deposit the requisite bond security for his release, the accused did provide any relevant information to assist in establishing ties to family and the community.
5. The probation officer noted that the instant offence could create tension between the two neighbouring communities of Kericho County and Nyamira County. The family of the victim were



vehemently opposed to the release of the accused and alluded that it may jeopardise justice. Therefore based on the findings of the social inquiry and the assessment of the home environment, the probation officer found David Moseti not suitable to be released on bond for lack of relevant information for the court's determination in deciding whether he can benefit from bond and therefore recommended that the court withhold his release on bond until relevant crucial information is established in the interests of justice.

6. The county probation officer filed a pre-bail report also in respect to Edna Kwamboka Enariko. In the said report, it is noted that whereas the accused alluded that her family members are ready to deposit the requisite bond security for her release, the contact person provided could not be reached to support in assessing her conduct in the community and her flight risk level.
7. The probation officer noted that the instant offence caused tension among the accused's tribe and the local people who reside within the area where the offence was committed. The community was opposed to the release of the accused in fear that she may escape and jeopardize justice. Therefore based on the findings of the social inquiry and the assessment of the home environment, the probation officer found Edna Kwamboka Enariko not suitable to be released on bond and therefore recommended that the court withholds her release on bond until relevant crucial information is established in the interests of justice.
8. The right to bail is both constitutional and statutory, the accused person has a constitutional right to be released on reasonable bail terms unless there are compelling reason not to grant the accused person bail.
9. The right to bail is entrenched in article 49 (1) (h) of *the Constitution* which states as follows:- "An arrested person has the right - to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released."
10. As a constitutional right, its enjoyment can only be limited if exceptional circumstances are established. In interpreting the right to bail, section 123A of the *Criminal Procedure Code* CAP 75 Laws of Kenya sets the parameters for the grant of the right to bail as follows: "
 - (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 fulfilment 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."



11. In Republic v John Kahindi Karisa & 2 others [2010] eKLR the court observed as follows; "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."
12. In the instant matter, I find that the pre bail reports are unfavourable, on account of scanty information provided by the applicants and the lack of relevant information to aid the court's determination in determining whether the applicants can benefit from bond. In the circumstances, I hereby dismiss the application for bail/bond pending trial.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 30TH DAY OF APRIL, 2025.

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Maundu

Accused – Present in Person

Mr. Kirui holding brief for Naima Kirui

