



**Republic v Ahmed (Criminal Case E003 of 2025)
[2025] KEHC 4954 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2025**

**JN ONYIEGO, J
APRIL 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

NOOR ADAN AHMED ACCUSED

RULING

1. The accused person herein is charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code*. Particulars are that on 4th day of March 2025 at Konton Location, Khorof Harar Sub-County in the republic of Kenya he murdered Hassan Mohamed Abdi.
2. Having pleaded not guilty to the charge, he applied for his release on bail. Consequently, the court ordered for a pre-bail report dated 04-04-2025 which dis-recommended his release on bail pending trial; Among the reasons cited for discommending his release are; he has lose family ties; his family is not willing to stand surety for him; accused having been cousin to the deceased, nobody from the larger family is willing to stand surety for him; the community gave a negative report about him; being a former national police reservist he is perceived to be a threat to the community; the victim’s family is still bitter and that his safety in the community is not guaranteed.
3. In response, Mr. Owino counsel for the accused urged the court to release the accused on bail considering the fact that it’s a constitutional right and that no compelling reasons had been advanced by the prosecution to warrant denial. Mr. Owuor for the state opined that it was in the interest of the accused to remain in custody for his own security or safety.
4. I have considered the application herein, the response thereof and oral submissions by both counsel.
5. Article 49 (1) (h) of *the Constitution* provides that: - An accused person has the right...(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.



6. Compelling reasons are not defined in *the Constitution* in as much as Section 123A of the *Criminal Procedure Code*, provides 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 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. The factors to be considered in determining whether or not to grant bail are also set out in the Kenya Judiciary's Bail and Bond Policy Guidelines. In the same breadth, it is not in doubt that the rationale behind any release of an accused person on bail or bond in Kenya is premised on the constitutional provision under Article 50 (2) (a) of *the Constitution* that an accused person is presumed innocent until the contrary is proved.
8. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
9. The question that seeks to be addressed is 'what is the meaning of compelling reasons.' In the case of Republic V Joktan Mayende & 3 Others [2012] eKLR, Mohamed Abdrurrahman Said & Another V Republic [2012] eKLR, Wilson Thirimba V DPP [2012] eKLR, among others, the respective Courts reverted to the meaning of the word 'compelling' which is defined in the Concise Oxford Dictionary, 9th Edition as 'rousing, strong, interest, attention, conviction or admiration'.
10. However, 'compelling reasons' is relative as it depends on the circumstances of each case. As such, the mere fact that the offence with which an accused is charged carries a serious sentence is not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond from appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will be able to attend the trial and whether or not a free and fair trial can be achieved notwithstanding the release of the accused on bond.
11. The imposition of terms of bail, if necessary, must similarly be for the purposes of ensuring the attendance of the accused at the trial and ought not to be based solely on the sentence that the accused



stands to serve if convicted. See *Republic vs Wycliffe Nyakwana Nyamweya* (Criminal Revision 135 of 2016) (2016) KEHC 7930 (KLR) (Crim) (28 July 2016) (Ruling) where the court held that;

“It is therefore my view that the discretion to grant bail and set the conditions rests with the court. In all cases where the court is called upon to exercise its discretion in regard to whether or not it should grant bail pending trial, the most important consideration is whether the accused will attend court during trial”.

12. Similar position was re-emphasized by the court in *Republic – Vs- Danson Mgunya & Another* [2010] eKLR where M. K. Ibrahim J (as he then was) held thus;

“As a matter of fact, all other criteria are parasitic on the omnibus criterion on availability of the accused to stand trial. Arising directly from the omnibus criterion is the criterion of the nature and gravity of the offence. It is believed that the more serious the offence, the great incentive to jump bail although this is not invariably true. For instance, an accused person charged with capital offence is likely to flee from the jurisdiction of the court than one charged with a misdemeanour, like affray. The distinction between capital or non-capital offence is one way crystallized from the realization that the atrocity of the offence is directly proportional to the probability of the accused absconding. But the above is subject to qualification that there may be less serious offences in which the court may refuse bail, because of its nature.”

13. In exercising its discretion, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. As the fundamental consideration is the interests of justice, the court will lean in favour of liberty and grant bail where possible, provided the interests of justice will not be prejudiced by this. However, where the prosecution satisfies the Court that there exist compelling reasons which justify the denial of bail or bond, then the Court will deny the same.
14. As already noted, the primary consideration for bail is whether the accused will attend court for his trial. Therefore, if a compelling reason is demonstrated that the accused person is likely to fail to attend court proceedings, then the discretion should be denied. [See *Kelly Kases Bunjika Vs Republic* [2017] eKLR].
15. In the instant case, the only reason advanced for the refusal to grant bail is the allegation that accused’s family and the community at large does not want him and that it is in his best interest that he be detained in custody until such a time that the situation shall have calmed down. Whereas one of the grounds for refusal to release an accused person on bail is where his life is in danger, the danger must be so imminent and palpable and not just but the desire to see somebody in detention.
16. Courts should not deny a citizen his constitutional right based on a mere expression interest of the society. Obviously, in every death, there is bitterness expressed. That alone cannot take away the right for an accused to be released on bail pending trial. An accused person is deemed innocent until proved guilty.
17. In the circumstances, I am not persuaded that there are compelling reasons advanced not to release the accused person on bail pending trial. To that extent, the application herein is allowed and accused person is hereby released on a bond of Kes one million with one surety of same amount.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF APRIL 2025.

J. N. ONYIEGO



JUDGE

