



**LAO v Republic (Criminal Case E003 of 2025)
[2025] KEHC 4892 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E003 OF 2025
RN NYAKUNDI, J
APRIL 25, 2025**

**IN THE MATTER OF ARTICLES 49 (1) (H), 50 & 51 OF THE
CONSTITUTION OF KENYA 2010 AND IN THE MATTER OF SECTION
123 AND SECTION 124 OF THE CRIMINAL PROCEDURE CODE CAP.
75 LAWS OF KENYA AND IN THE MATTER OF BAIL AND BOND
POLICY GUIDELINES 2015**

BETWEEN

LAO ACCUSED

AND

REPUBLIC COMPLAINANT

RULING

1. What is before this court is a Notice of Motion Application dated and filed on 16th March 2022 expressed to be brought under articles 49(1), (h), 50 & 51 of the Constitution of Kenya and sections 123 and 124 of the Criminal Procedure Code. The applicant seeks the following orders;
 - a. That the Honorable Court be pleased to adopt the Bail Report from the Probation Officer dated 28/02/2025 and filed on 06/03/2025 and to admit the Applicant on reasonable cash bail and/or bond terms by releasing him on favorable bond terms forthwith.
 - b. That the Applicant's travel documents i.e. Passport Number: AK0XXXX22 be deposited in court and that the Applicant not to travel outside the country and until the hearing and final conclusion of the case.
2. The application is anchored on grounds that:



- a. That the Applicant is in custody at Eldoret Prisons awaiting Probation Report on bond and Bail terms Approval.
 - b. That the Probation Officer has since filed the bail report dated 28/02/2025 on filed on 06th day of March, 2025.
 - c. That the report now before this Honorable court is favorable to the Applicant to be released on Bond and Bail terms.
 - d. That subsequently, the Applicant is suffering from underlying medical conditions ranging from pneumonia and asthma and other ailments and has been frequently referred from Eldoret Prison Healthy Facility hence his health condition demands that the application for bond & bail terms be heard on priority basis, and shall not await the slated dated for Hearing on 01/04/2025.
 - e. That the Applicant is ready and willing to abide by the terms and/or conditions set forth with the Honorable Court on granting bond and Bail approval.
 - f. That the Applicant is not a flight risk and the recommendations by the Probation Report are worth been adopted by the Honorable court forthwith. Further that he is ready and willing to abide to conditions of depositing his travel documents (Passport) with court and not to travel outside the country until the case is concluded and verdict issued.
 - g. That the Applicant shall not interfere with witnesses in this case and which findings have been adopted by the Probation Report filed before this Honorable Court.
 - h. That the Applicant shall undertake to attend court sessions without any fail.
 - i. That it's the Applicant's Constitutional Right in terms of Article 49 (1) (h) to be granted reasonable cash bail and/or bond terms unless there are compelling reasons not to do so and there are no compelling reasons cited in the Probation report filed before this court on 06/01/2025 to warrant the denial of the Applicant Cash Bail and or bond.
 - j. That no harm or prejudice shall be suffered and or occasioned by the Respondent if the orders sought are granted.
3. The application is supported by an Affidavit for Justification of Bond Approval sworn by AOO, the biological father of the accused, dated 23rd April, 2025. In the affidavit, the deponent states that he is a Kenyan Citizen of sound mind, holder of Kenyan National Identity Card Number 16XXX21, and the biological father of the accused LAO. He wishes to be admitted as surety and has offered his land parcel number Kakamega/Lumakanda/4411, measuring two acres with developments thereon valued at Kenya Shillings Two Million (Kshs. 2,000,000/-), as security/collateral for the release of his son. The deponent further states that his son is not a flight risk, having known him as an obedient child with no previous criminal charges. He acknowledges that his son had traveled to Dubai in 2019 and has since been returning to Kenya periodically before his arrest. The deponent is willing to deposit the original log book and passport in court and undertakes to ensure that his son attends court without failure. The Probation Officer has filed a bail report dated 28/02/2025 which recommends reasonable bond terms for the accused.

Analysis and determination

4. Article 49(1)(h) of the *Constitution* of Kenya provides;
An arrested 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.
5. Section 123A of the *Criminal Procedure Code* provides;
- (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;
6. In granting the application bond, it is essential that the court brings out the purpose of bail and bond. In *Mohamood Chute Wote & 2 others v Republic* [2021] eKLR Hon. Grace Nzioka expressed herself on the Article 49(1)(h) and section 123 of the *Criminal Procedure Code* as follows;

The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of the *Constitution* of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the *Criminal Procedure Code* provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.

7. At Paragraph 3.1. (d) of the Bail and Bond Policy Guidelines (at page 9) it is provided that:

“d) ...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the



circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case.”

8. From the affidavit sworn by AOO, the father of the accused and proposed surety, it is evident that the applicant has strong community ties. He hails from a functional family background in Bendera area within Lugari Sub County. The affidavit indicates that the applicant has no previous criminal record and is described as a responsible individual by his family.
9. The probation report dated 28/02/2025 and filed on 06/03/2025 provides a comprehensive assessment of the applicant. According to the report, the applicant is 27 years old, was born in 1997 in Lumakanda Location, and worked as a Plant Operator before seeking employment opportunities abroad.
10. Of importance is the fact that the victim's family, while concerned about the reopening of the case six years after the incident, has not objected to the possibility of the accused person's release on bond. This suggests that there are no significant concerns about witness intimidation or interference.
11. The Court also takes note of the offer by AOO to stand as surety and to deposit his land title deed valued at Kenya Shillings Two Million (Kshs. 2,000,000/=) as security. The land, bearing title number Kakamega/Lumakanda/4411, has been verified through an official search and valuation report, both of which have been annexed to the supporting affidavit.
12. To address potential flight risk concerns, the applicant has demonstrated willingness to surrender his Kenyan passport (No. AK0XXXX22) to the court for the duration of the proceedings. This measure aligns with the prudent recommendation contained in the probation report, which suggests retaining the applicant's travel documents in court custody until the final determination of the matter. Such a condition provides a reasonable safeguard that balances the applicant's constitutional right to bail with the legitimate interest in ensuring his continued attendance at trial.
13. Having carefully weighed all these factors, I find that the prosecution has not demonstrated compelling reasons to deny the applicant bail. The probation report supports the applicant's release on reasonable bond terms, and the victim's family has not raised objections. The concerns about flight risk can be adequately addressed through the surrender of the applicant's passport and the imposition of appropriate reporting conditions.
14. Having carefully considered all the relevant factors, I find that the applicant has established grounds for his release on bail pending trial. Accordingly, I make the following orders:
 - a. LAO, the applicant herein, is admitted to bail on a bond of Kshs. 1,500,000/- with one surety of a similar amount.
 - b. The surety bond shall be secured by the title deed for Land Parcel Number Kakamega/Lumakanda/4411 offered by AOO, and the original certificate of title shall be deposited with the court registry for the duration of the proceedings.
 - c. The applicant shall, prior to his release, deposit his passport (No. AK0XXXX22) with the Deputy Registrar of this court, which shall be retained for the entire duration of the trial.
 - d. An order is hereby issued to the Director of Immigration Services to enter a restriction in the immigration database against the name of the accused person, LAO, pursuant to this ruling, prohibiting any international travel for the duration of these proceedings.
 - e. The applicant shall not contact or interfere with prosecution witnesses either directly or through agents.



- f. In the event of breach of any of these conditions, the bond shall be cancelled and the applicant shall be arrested and remanded in custody.
- g. The main trial shall proceed before Court No. 3.
- h. A pre-trial conference shall be conducted on 15th May, 2025.

15. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 25TH DAY OF APRIL, 2025

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R. NYAKUNDI

JUDGE

