



**Republic v Omar (Criminal Case E005 of 2025)
[2025] KEHC 6968 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E005 OF 2025
RB NGETICH, J
MAY 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SALIM KEVIN OMAR ACCUSED

RULING

1. The accused Salim Kevin Omar has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence being that the accused person on the dates between 9th day of February and 16th day of February,2025 at Marigat Inn Location within Marigat Sub- County in Baringo County, murdered Hamisi Yunus.
2. On the 13th March,2025, the charge and its full particulars were read over to the accused person who denied the charge and a plea of not guilty was entered. The prosecution urged this court to call for pre-bail report to assist the court in determining bond. Prebail report was filed as directed by the court.

Pre-bail Report

3. From the report, the accused had formal education up to form two at Marigat Day Secondary School when he dropped out on his own will. After dropping out of school he started working as a boda-boda rider. Later on, was employed by his guardian to run a video shop where he worked until the time of his arrest.
4. The accused’s history is that he abandoned by the parents and lived as a street child before he befriended the son of his current guardian. He was adopted by the guardian and has been living with his guardian and her family ever since then. The accused’s guardian is ready to provide surety for the accused person if he is granted bond. The guardian however admitted that there is hostility between the family of the victim and accused’s family making it difficult to approach the family of the victim as they are still very bitter for losing their loved one.



5. The accused states that he understands the offence is a serious offence and seek bond so that he can be able to take of his children who are under the care of his mother at Kambi Turkana. He adds that although his biological parents abandoned him, he later traced them and has been assisting in providing for them and the mother has been taking care of his two children upon separation with his wife. He promises to attend court if and when he is required to do so. Accused has no history of jumping bail.
6. The family of the victim are still very bitter. They stated that the accused's guardians have not approached them for forgiveness, that they are not remorseful and they have been bragging that they can pay off the family of the victim so that the matter can be withdrawn. Further that the accused may flee to Turkana if released on bond.
7. The Area Assistant Chief indicated that the accused and his family are well known. She did not oppose the accused being released on bond stating that the accused is not a flight risk.
8. The village elder on his part stated that the accused person was of good conduct before his arrest and he is not a flight risk. However, the chairperson of the local community policing unit on his part stated that while he does not view the accused as a flight risk, he is aware of hostility against the accused by the family of the victim and stated that he cannot guarantee the safety of the accused if released on bond. He was therefore of the opinion that the accused should stay in custody for now.
9. The accused's guardian is willing to deposit security in court and undertakes to ensure that the accused person attends court when required.

Determination

10. Bail is a constitutional right of every citizen. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“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.”
11. Moreover, by dint of Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.
12. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:
 - (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.
13. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:-
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
14. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:
- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - (b) The strength of the prosecution case.
 - (c) The character and antecedents of the accused person.
 - (d) The failure of the accused person to observe bail or bond terms.
 - (e) The likelihood of interfering with witnesses.
 - (f) The need to protect the victim or victims of the crime.
 - (g) The relationship between the accused person and the potential witnesses.
 - (h) The best interest of child offenders.
 - (i) The accused person is a flight risk.
 - (j) Whether the accused person is gainfully employed.
 - (k) Public order, peace and security.
 - (l) Protection of the accused persons.
15. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.
16. The victim’s family are opposed to accused being released on bond on the ground that the family of accused have not sought forgiveness from them, that they are not remorseful and are bragging that they can pay the family for loss of deceased which intensified bitterness against accused. They are also apprehensive that the accused is likely to flee to Turkana if released on bond. I have considered the above sentiments and take Judicial Notice of the fact that there is no doubt that loss of a family member in the hands of another will no doubt occasion anger and bitterness by victim’s family against accused and may extend to his family and it may take time for the victim’s family to heal and whereas it is understood that the victim’s family will not be happy to see the accused back to the community, it is not



one of the factor's to be considered in determining whether there is compelling reason to deny accused bond unless it is demonstrated that bitterness may result in security of the accused being compromised. From the local administrator's sentiments, there is no indication that accused's life will be endangered if released.

17. In respect to accused being a flight risk, the local administrator has indicated that the accused and his family are well known in the area. There is therefore no risk of accused absconding or fleeing jurisdiction of this court. In view of the above, I find that there is no compelling reason to warrant denying accused bond.

18. Final orders:-

Accused may be released on bond of Kshs 500,000 with one surety of a similar amount.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF MAY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Kosgei for State.

Ms. Barasa for Accused.

Accused present.

Elvis/Momanyi – Court Assistants.

