



REPUBLIC OF KENYA



Director of Public Prosecution v Amakole alias Soja (Criminal Case E034 of 2025) [2025] KEHC 7195 (KLR) (27 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E034 OF 2025**

S MBUNGI, J

MAY 27, 2025

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

FRANCIS MUCHILA AMAKOLE ALIAS SOJA ACCUSED

RULING

1. The accused person, Francis Muchila Amakole, was charged on 30.04.2025 with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. A plea of not guilty was entered. Defence Counsel, Ms. Kadenyi, made an oral application to the court, praying that the accused person be released on favorable bail/bond terms. She submitted that the accused had a right to be deemed innocent until proven guilty. She also pointed out that no affidavit had been filed by the prosecution opposing bond.
3. Prosecution Counsel, Ms. Osoro, prayed that the court calls for a pre-bail report before granting bond since the deceased and the accused were neighbors.
4. I ordered that a pre-bail report be filed to assist the court in making its determination.
5. A pre-bail report was filed on 12.05.2025 by the probation office, Kakamega County in which it was recommended that the accused's bond be deferred for now.
6. The court's power to grant bond is provided for under Section 123 of the [Criminal Procedure Code](#), the discretion is not absolute but is informed by considerations set out under Section 123 as read with the Bail and Bond policy guidelines and further circumstances which apply on a case to case basis. Therefore, issues for determination in the accused application are:-
 - i. Whether the accused is a flight risk



- ii. Whether the accused lacks a place of abode and cannot be traced if released
 - iii. Whether the accused security would be at risk
 - iv. Whether the accused would interfere with witnesses
 - v. Whether the conclusion in the inquest form compelling reasons to deny him bond.
7. Article 49 (1) (h) of *the Constitution* grants an accused person the right to be released on bond or bail on reasonable conditions pending the hearing and determination of his trial. It states as follows;
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.
8. 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;
9. The right to bail and bond is premised on the accused person's right to be presumed innocent until proved guilty as no evidence has been placed before this Court yet on their culpability and the accused person's right to liberty. In deciding whether or not to grant bond, the court is guided by the following principles:-
- (a) The right of the accused to be presumed innocent.
 - (b) The accused person's right to liberty.
 - (c) The accused's obligation to attend trial.
 - (d) The right to reasonable bail and bond terms.
 - (e) That bail determination must balance the rights of the accused persons and the interest of justice.
 - (f) Consideration of the rights of the victims



10. The Court has discretion to grant or refuse bail depending on the circumstances of each case. The Court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case.
11. In Republic Vs. William Mwangi Wa Mwangi [2014] eKLR ,Muriithi, J held that:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail...It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”
12. Similarly, in the case of Kelly Kase Bunjika v Republic [2017] eKLR the Court had this to say: -

“It is clear that the primary consideration for bail is whether the accused will attend his trial for charges facing him and it must therefore be a compelling reason if it is demonstrated that the accused person is likely to fail to attend court proceedings. The question in this matter becomes whether there is on a balance of probabilities evidence that the accused is likely to abscond.”
13. In Nyeri High Court Criminal Case No. 8 of 2016 Republic vs Danford Kabage Mwangi the criteria or compelling reasons to consider in the exercise of judicial discretion in bail applications were set out to include:
 - i. The nature of the charges.
 - ii. The strength of the evidence.
 - iii. The gravity of the punishment in the event of conviction.
 - iv. The previous criminal record of the accused, if any.
 - v. The probability that the accused may not surrender himself for trial.
 - vi. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.
 - vii. The likelihood of further charges being brought against the accused.
 - viii. Detention for the protection of the accused.
14. A pre-bail report acts as a guide to the Court when considering the suitability of an accused person whether to be released on bail and/or bond. However, the pre-bail report is not the final say.
15. According to the Pre-bail report on record, the accused person(39 years old) was a casual laborer. His father is a casual laborer, too. His mother passed on. He currently has no fixed abode since their home was torched down following the incident. The accused also has no national identity card since he never registered for one.
16. The victim’s family expressed deep emotional pain since the incident is still fresh in their minds. They also expressed their fear that the accused person might cause them harm, if released on bond, and he might interfere with key witnesses, who are his neighbors.
17. The prosecution has not provided any evidence by way of an affidavit that the accused is a flight risk.



18. On the issue whether the accused might not be safe if released on bond to me security starts with one self. If released on bond an accused feels that he/she is not safe can make arrangements to ensure safety or can as well elect to stay in the remand.
19. From the foregoing I find there is no compelling reason to warrant this court to deny the accused bond. I di admit him to bond of Kshs.500,00/= plus a surety of like amount.
20. Hearing on 30.6.2025.
21. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF MAY, 2025

S.N. MBUNGI

JUDGE

In the presence of

Court Assistant: Elizabeth Agong'a

