



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Hashim (Criminal Case E082 of 2024)
[2025] KEHC 11301 (KLR) (Crim) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E082 OF 2024
MW MUIGAI, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

**HASHIM DAGANE MUHUMED ALIAS HASHIM MOHAMED
KHALIF ACCUSED**

RULING

Background

Count 1

1. The accused person Hashim Dagane Muhumed alias Hashim Mohamed Khalif is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap.63 Laws of Kenya
2. Particulars of the offence being that on the night of 21st October 2024 and day of 22nd October 2024 at Kyumbi area within Machakos County, murdered Dahabo Daud Said alias Waris.

Count 2

3. The accused person Hashim Dagane Muhumed alias Hashim Mohamed Khalif is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap.63 Laws of Kenya
4. Particulars of the offence being that on the night of 21st October 2024 and day of 22nd October 2024 at Parklands area within Nairobi County murdered Amina AbdiRashid Dhahir



Count 3

5. The accused person Hashim Dagane Muhumed alias Hashim Mohamed Khalif is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap63 Laws of Kenya
6. Particulars of the offence being that on the night of 21st October 2024 and day of 22nd October 2024 at Parklands area within Nairobi County, murdered Musayba Abdi Mohammed

Count 4

7. The accused person Hashim Dagane Muhumed alias Hashim Mohamed Khalif is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya.
8. Particulars of the offence being that on the night of 29th October, 2024 and day of 30th October 2024 at Valley Heights Apartment, Lavington area within Nairobi County, murdered Deka Abdi Noor Gorane
9. On 21/1/2025, the accused person was found FIT TO PLEAD and the 4 counts/charges were read to him in English and he pleaded NOT GUILTY to counts. Ms Owino held brief for Ms Muyoka Lawyer appointed for the Accused person applied before Hon. K. Kimondo J for the Accused person to be released on bond.
10. high lighted the same in Court on 16/7/2025. The salient aspects of consideration of bail /bond terms for the Accused person were based on the following;
11. The Accused has been in custody and he has a family no material was placed in Court to show he is flight risk and that his life is in danger , it is the duty of the State to protect the citizen and he will risk taking care of his family. The fact that he will be served with Witness Statements does not mean that there will be Witness interference or tampering of evidence.
12. If any witness feels threatened then she/he ought to be with the Witness Protection Program.

Accused Person's Written Submissions Dated 3Rd June 2025

13. The accused person is not a threat to public order and even if the protests were related to this case, public opinion should not dictate the administration of Justice. Public opinion is more often than not laden with bias, misinformation and a distorted perception of justice. In stating this, heavy reliance is on the case of Benson Kimathi & Another (2019), where Justice R.K. Limo rightly held that Courts must decide cases based on law and evidence, not public sentiment.
14. Put differently, and in the famous words of Lord Mansfield in the 1770 case of R -VS- Wilkes.

“ Let justice be done, though the heavens may fall.”
15. It is expected that having put forward the argument that the accused is a flight risk, the Prosecution would fulfil their duty by providing evidence to the effect that, the accused tried to escape or was on the run prior to his escaped. In submitting this, we place reliance on the case of Republic V William Kipkorir Kipchinchir & Another [2018]eKLR
16. On the contrary, and as previously submitted, Mr. Dagane, voluntarily surrendered himself to the Police, very early in the morning on 3rd November 2025 and when the police told him to come back



at a later time in the day, he went about his day and returned to the police station in the afternoon of the same day

17. The Prosecution has argued that the Kenyan-Somali boarder is porous thus the accused is likely to abscond. In response to this, that the appropriate approach would be for the Court to issue stringent bond terms as opposed to the total denial of bail. In stating this, we place reliance on the case of Republic vs Dwight Sagaray & 4 Others [2013] 3824 (Klr) where the Justice C Kipkorir (as he then was) held thus:-

Indeed as stated earlier, the primary purpose of bail is to secure the accused's attendance at trial. The prosecution's apprehension is therefore a consideration not to be taken lightly. I have treated it with the seriousness it deserves and come to the considered view that the panacea for possible flight is not to automatically deny bail but to impose stringent conditions that would attract attendance at trial.

18. See also Republic [2025] KEHC 1911 (KLR) V Qaasim [2025] KEHC 1911 (KLR)

In the end, considering that the accused person is a foreigner and that he has deep roots in a neighboring country whose borders remain porous, the court must balance the scales of liberty against the need to ensure that cause of justice is not defeated. As a result documents (passports) for Kenya and any other country passport

- i. That the accused person shall deposit with the court his travel that he may be holding.
- ii. The accused person is to be released on a Bond of Kshs. 3 million plus two Kenyan sureties of similar amount.
- iii. The accused person shall provide two contact persons who must be Kenyan citizens ready and willing to produce the accused whenever required to attend the court.
- iv. The accused person to provide details of the location and house where he shall be residing in Nairobi until the matter is heard and determined. v. The accused person shall not leave the county of Nairobi without clearance by the court.
- vi. Mobile phone number of the accused person to be provided which number he shall use and retain throughout the trial period.
- vii. Each of the sureties to provide details of their place of abode plus their mobile telephone contacts which they must retain throughout the period of the accused person's trial.
- viii. Accused person should not interfere with the prosecution witness until the matter is heard and determined.
- ix. Hearing dates to be fixed immediately before release of the accused.

19. In the Tanzanian case of Panju v Republic [1973] E.A. 282 at page 283 the court expressed itself as follows:

“It is clear that the Magistrate could not accept that the allegation that the accused was to interfere with witnesses had any substance at all. The magistrate was right in discounting such allegations which are now becoming stock allegations against accused persons, as such allegations need to be substantiated by affidavits as it has often been held by the courts..... If the courts are simply to act on allegations, fear or suspicions, then the sky is the limit and one can envisage no occasion when bail will be granted whenever such allegations are made.”



20. Coming back home, in the of Michael Juma Oyamo & another v Republic [2019] KECA 953 (KLR) where the Court of Appeal was faced with the same question of witness interference, and addressed itself as thus

“In the investigating officer's affidavit the prosecution did not demonstrate how the appellants were likely to interfere with prosecution witnesses. Mr. Mwangi merely stated that the appellant, being a Personal Assistant to the governor "wields influence and power at the behest of the governor" and therefore there is real risk that if released on bail he may reconnect with other persons who may have committed the offence jointly with him and put prosecution witnesses at risk. He also contended that some key witnesses came from the same area as the appellant, and thus there existed chances of interference with the witnesses. He further contended that the victim's family was under threats and intimidation and they believed that the three accused persons were behind those threats and intimidation.

21. The prosecution has failed to demonstrate that the protests were as a direct consequence of this case. Further, even if the protests could be linked to this case (which is vehemently denied), this Court to remain steadfast in upholding the rule of Law, and should not yield to public pressure in determining the Accused's Constitutional Right. In submitting on the above, heavy reliance is on the case of Republic vs Benson Kimathi & Another (2019) 1 eKLR, Justice R.K Limo, specifically addressed himself as follows;

“.....In any event, it is their Constitutional right to be admitted to bail whether the public approves or disapproves. It would be a travesty of justice, in my view if the courts were to apply the edict used in biblical times which I can describe as " Pontius Pilate's edict" (ie. leaving the fate of a suspect in the hands of a crowd). If this court was to go that route the Constitutional rights of accused's persons would seriously be violated. That is not tenable in an open democratic society that cherishes the rule of law. The judicial independence demands that courts make decisions based on the law and the evidence presented. We cannot be called upon to make decisions based on affection or ill will of the public. To do so is not only against oath of office but is akin to subjecting parties in court to "public" mob justice. That obviously is not tenable and a court of law should stand firm to the fidelity of the law. I am therefore not persuaded that accused persons should be denied bond merely to please the public.....’ .

Prosecution's Affidavit in Opposition of Bond

22. The accused has been charged with four counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He subsequently made an application to be released on bond pending the hearing and determination of this case.
23. The State opposes this application and relies on the replying affidavit sworn on 28th January, 2025 by No. 85218 SGT Mohamed Hassan, from DCI, who is the Investigating Officer in this case.
24. That the Accused person was well known to all the deceased persons and they were neighbours in Garissa- Bulla Tawakal. In 2023, the family of the Accused person and that of the deceased in Count 1 relocated to Eastleigh estate in Nairobi and sent the Accused person errands using his motor vehicle reg KDQ 718 Y Make Nissan Note.



25. That the body of the deceased in count 3 was found on 22nd October 2024 opposite Bahati Primary School in Makadara Sub County and the incident was booked at Jogoo Road Police Station vide OB No. 23/22/10/24. (Annexed is the OB Extract marked "MH5")
26. That on 31 October 2024, skeletal remains were discovered at Langata Cemetery. which upon DNA analysis revealed that they belonged to deceased in count 4 (Annexed is the OB Extract No. 64/31/10/24 from Langata Police Station marked "MH-(a)" and Government Analyst Report dated 28/11/24 marked as "MH6(b)")
27. That preliminary investigations established that the accused's father names Mohamed Khalif lives in Ethiopia state Five Godey and that he did his primary and secondary education in Ethiopia between 2006 to 2010. 19. THAT between 2010 to 2015, the accused was recruited in the Yahedic Command (Ethiopian Army) before he left in unclear circumstances
28. That that there is a very high likelihood of the accused interfering with prosecution witnesses given that he is well known to nearly all the civilian witnesses, to wit, deceased's husband, workmate to deceased 4, accused's employer. taxi driver, who are related to the 4 victims and/or workmates.
29. That considering that the accused possesses a Somali passport under the name Hashim Mohammed Khalif issued on 21/2/2022 as Passport No P01159713 and a Kenyan National Identity card issued on 15/6/2023 No 42719659 under the name Hashim Dagane Muhumed he is likely to abscond and/or disappear, given that he has dual nationality. Identity Card bearing different names, if released on bond he is likely to abscond and/or disappear.

Prosecution Submissions

30. Although Article 49(1) (h) of *the Constitution* grants the accused a right to bond or bail, the right is not an absolute one. Where there are compelling reasons this right may be restricted. The state will demonstrate compelling reasons why the applicant should not be granted bond. What constitutes compelling reasons has been comprehensively enumerated in the March 2015 Bail and Bond Policy Guidelines, which guides judicial officers in the application of the laws on bail and bond.
31. The Guidelines provide, in paragraph 4.26, that the prosecution needs to satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. Further, it should be noted that one of the objectives of these guidelines is to ensure that the rights of accused persons are balanced with the public interest, which includes the rights of the victim.
32. In the replying affidavit sworn by the investigating officer, there are three compelling reasons raised, as to why the accused should not be released on bond or bail.
 1. The accused is a flight risk.
 2. The accused is likely to interfere with witnesses.
 3. The public interest and accused own security.

A. The Accused is a Flight Risk

33. The accused has a Kenyan Identification Card and also holds a Somali passport both bearing different names, he has no fixed place of abode in Kenya. He therefore poses a high flight risk. He also has knowledge of how he can get out of the country having previously travelled. It has not been indicated where the accused will reside if granted bond. These combined set of circumstances fully demonstrate



that the accused is a flight risk and therefore if released on bond, he will abscond from the jurisdiction of the court.

34. The High Court in *Mwangi v Republic* (Criminal Case E019 of 2023) [2024] KEHC 9453 (KIR) (25 July 2024) (Ruling). Justice Ndung'u denied the accused person bail upon being persuaded that the accused person was a flight risk and stated that:-

“The prime consideration in the application before court is that the accused shall attend her trial. That she is not a flight risk. The fear of an accused being a flight risk is mitigated by the existence of a known fixed abode as well as established strong social ties at family and society levels..... “

35. On the material before court, it emerges from the Bail information report that that the accused has no fixed abode. His own family has had challenges tracing his from time to time as he keeps changing residences and contacts. This is independent information from a government agency.
36. On that basis alone, am persuaded that the accused is a flight risk and on release on bail, his attendance to court cannot be assured. I consider this a compelling reason to deny the accused bail.”

B. The Accused is Likely to Intefere With Witnesses

37. In this case, the accused has been provided with witness statements and therefore knows the identity of the prosecution witnesses. In the case of *Republic Vs. Fredrick Ole Leliman & 4 Others* [2019] eklr. Lesiit J denied accused persons' bond. At paragraph 72, and stated that:

“In regard to public interest and the compromise of the criminal justice system through various forms of interferences with the case, all that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during Investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons.”

C. The Risk of Public Tension and Accused Ownsecurity

38. The accused was well known to all the Deceased persons. Deceased in Count 1-3 were his neighbors in Garissa-Bulla Tawakal. Deceased in Count 4 was her girlfriend. Their families reside in Eastleigh where accused was residing.
39. On 24 October 2024, there were demonstrations in Eastleigh relating to murder of the ladies. The public interest in this case is great due to rise in femicide cases in the country. Also given the close relationship between the accused and the deceased's family, his presence in the same community could provoke emotional distress, public outrage, or even retaliatory actions. The security of the accused should be considered as he can be harmed by the public and the court must protect the accused.
40. In the case of *State vs Migosi* (Criminal Case F059 of 2023) [2024] KEHC 2847 (KLB) (March 2024) (Ruling), the court held that:- "Threat to life is a serious issue which cannot be ignored. The fact that the memories of the death of deceased were still fresh what not the only reason raised in the report. Right to life is fundamental and this court this the custodian of the rights of citizens and thus it has a duty to protect the rights of accused persons, complainants, witnesses or the community at large. I



find that since the life of accused I will be endangered if he is released on bond at this juncture and thus this is a compelling reason to deny him bond."

41. In light of the foregoing, this court to consider the above compelling reasons and not admit the accused person on bail or bond until this matter is heard and determined. Where the court is inclined to grant bail or bond, we pray for stringent bond terms and conditions that the accused deposits passport with the court. That he be ordered to report to DCI Head Quarters once every two weeks.

Analysis & Determination

42. This Court considered the application for bail and bond the Prosecution grounds in opposing grant of bail and bond, the written and high lighted submissions by both Applicant and Prosecution and the question to be answered is whether to grant or not grant bail or bond to the Applicant.

The law on bail and bond

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.

43. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P. 25 -4.26 which sets out judicial policy on bail/bond thus:-

"the following procedures should apply to the bail hearing:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-
- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- f. That the accused person is likely to interfere with witnesses or evidence; or
- g. That the accused person is likely to endanger national security; or
- h. That it is in the public interest to detain the accused person in custody."



45. In Republic vs Fredrick Ole Leliman & 4 Others [2016]eKLR the Court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of Ng’ang’a vs Republic 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the *Criminal Procedure Code* (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-

- a. The accused will fail to turn up at his trial or to surrender to custody;
- b. The accused may commit further offences; or
- c. He or she will obstruct the course of justice

In Republic v Oonde & another (Criminal Case E018 of 2024) [2024] KEHC 9000 (KLR) (25 July 2024) (Ruling) Muchemi J observed that:

“The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
- b. The strength of the prosecution case;
- c. The character and antecedents of the accused;
- d. The likelihood of the accused interfering with prosecution witnesses.”

46. In Republic v Danson Mgunya & Another [2010] eKLR described the right to bail as an “inalienable right” by holding that;

“The result of the foregoing is that 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.”

47. Republic v Sifuna (Criminal Case E014 of 2023) [2023] KEHC 22379 (KLR) (22 September 2023) (Ruling) court held that:

Therefore, in granting bail or bond, the trial court is called upon to exercise its discretion and, if there are no compelling reasons to deny an accused bail or bond, the trial court should exercise its discretion in favour of the accused.

48. Republic v Sifuna (Criminal Case E014 of 2023) [supra], Mrima J opined that:

49. Given the amorphous nature of the term ‘compelling reasons’ or ‘exceptional circumstances’, a Court while exercising its discretion in dealing with a bail and bond application must ‘consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances



- of an exceptional nature exist which justify his or her release' and must also balance "between the liberty interests of the accused and the interests of which", society in denying the accused bail, will be resolved in favour of the denial of bail, unless "exceptional circumstance" are shown....". In Kenya those 'compelling reasons' or 'exceptional circumstances' must be demonstrated by the prosecution.
50. The Accused person's right to bail and bond is outlined by Art 49 & 50 Constitution but subject to compelling reasons by the Prosecution.
 51. The Prosecution ODPP has the burden of proving that there are compelling reasons to deny release on bail/bond. To deny bail/bond the Prosecution ODPP must provide cogent evidence and not mere allegations, the claim ought to be substantiated. Compelling reasons may include failure to attend court Commit or abet commission of a serious offence; seriousness of the offence or endanger the safety of victims, individuals or the public or interfere with witnesses or evidence.
 52. From the record, the ODPP through detailed Affidavit by I/O on circumstances of the Applicant's close proximity and interaction with deceased's families, having been neighbors and interacted closely places the victim family members in fear of harm. The Defense has been provided with witness statements and therefore knows the identity of the prosecution witnesses and may include family, friends, neighbors of both Accused person and victims and makes possibility of interaction contact or engagement with potential witnesses real. At least the crucial or vulnerable witnesses should testify first on priority. Where there is more than speculative apprehension that an Accused Person could inflict genuine fear and anxiety in potential witnesses, the Courts ought to consider that as a factor in denying bail. (See R v Joseph Wambua Mutunga & 3 Others [2010] eKLR.)
 53. The Applicant's history and background is also detailed by the I/O and the Bail Assessment Report filed on 28/4/2025 demonstrates he was born in and went to school in Ethiopia, worked in Turkey, visits Somalia then came to Kenya. He has no fixed abode as he was staying with friends and given the different nationalities and multiple identity official documents the Accused person has he is deemed to be a flight risk.
 54. The offences the Accused person is charged with are serious involving 4 Counts of murder. This Court recognizes that one is presumed innocent until proved guilty. However, the charges preferred remain serious and grave which if proved would have serious consequences.
 55. Bail determination should balance the rights of the Accused person and interest of justice while ensuring safety and security of the victims and/or witnesses. To strike the balance in the instant case from the pleadings and submissions disclose urgent need to protect crucial vulnerable witnesses to testify first, the bail and bond shall be reconsidered. The trial shall be expedited.
 56. These provisions of bail and bond do not limit the number of times request for bail or bond may be made as was stated in Republic vs Ahmad Abolafathi Mohammad & Anor 2013 eKLR.

Disposition

57. For now the Bail and Bond application is denied to protect victim family members whom according to Bail Report fear harm and prevent witnesses possible interference.
58. The Trial to be expedited and vulnerable witness(s) testify on priority basis first.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT CRIMINAL DIVISION NAIROBI
ON 31/7/2025**

**M.W.MUIGAI
JUDGE**

