



**Republic v Sena (Criminal Case E010 of 2025)
[2025] KEHC 12243 (KLR) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12243 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E010 OF 2025
CM KARIUKI, J
AUGUST 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL KANYINKE SENA ACCUSED

RULING

1. The instant ruling is on bail application. In Kenya's criminal law, the purpose and objective of bail/ bond are to guarantee the accused person's attendance at Court for trial while preventing pre-trial punishment, upholding the constitutional right to liberty, and de-congesting holding facilities. It also serves to protect the integrity of the justice process by ensuring that conditions for release are reasonable and proportionate to the offense, and that any breach of conditions leads to forfeiture of the bond or cash deposit.

Primary Objectives

Ensure Attendance at Trial:

The primary goal of bail is to ensure the accused's presence in Court when required for hearings or trial, a crucial factor in maintaining the integrity of the justice process and avoiding pre-trial detention.

Uphold the Right to Liberty:

The right to bail, a constitutional guarantee, serves to protect the personal liberty of individuals by preventing pre-trial incarceration, a significant protection particularly in light of the principle of presumed innocence until proven guilty.

Prevent Anticipatory Punishment:



Bail prevents the accused from being punished before their guilt is established in Court, ensuring that pre-trial detention does not serve as a form of punishment, thereby upholding the principle of presumed innocence and the fairness of the legal system.

De-congest Holding Facilities:

A key objective of the bail and bond system is to reduce the burden on prisons and police cells by releasing eligible accused individuals back into the community pending their trials.

Thus, To Ensure Compliance With Bail Terms, Conditions And Guarantees Are Put In Place; Such As;

Reasonable Conditions: Bail terms must be reasonable and commensurate with the seriousness of the offense, rather than excessive. The accused must have a genuine ability to meet the conditions. Undertaking and Collateral: A bond is a legal undertaking by the accused to adhere to specific conditions set by the Court. This may involve financial security, such as a deposit or surety, which can be forfeited if the accused fails to comply with the conditions. Consequences of Breach: Suppose an accused person fails to attend Court or violates other conditions of the bail or bond. In that case, the Court can issue warrants for their arrest and order the forfeiture of any deposited cash or security. Jurisprudence On Bail/bond Has Distilled -Key Principles Presumption of Innocence: The right to bail is rooted in the constitutional principle that an accused person is presumed innocent until proven guilty beyond a reasonable doubt. Discretionary but Guided: While courts have discretion in imposing bail, this discretion is subject to constitutional provisions and statutory guidelines that ensure fair and equitable application of the law. Interest of Justice: The decision to grant or deny bail is made in the interest of justice, balancing the rights of the accused with the need to ensure their attendance and the integrity of the trial process.

Turning To The Instant Matter, /the Case At Hand,

Introduction

2. The accused, Paul Kanyinke Sena, is before this Court charged with the grave offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars allege that on the night of 12th July 2025, at Mara Junction Club within TM Area, Narok Central Sub-County, he murdered Advocate Nabaala Mandela Leyian.
3. Upon taking the plea, the accused applied to be admitted to bond pending trial. That application has been met with firm opposition from the prosecution and the family of the deceased.
4. The Court has been called upon to strike a delicate balance between the constitutional right of an accused person to bail under Article 49(1)(h) of *the Constitution*, and the compelling reasons advanced by the State and the victim's family urging the Court to decline bail on account of public safety, security, and the gravity of the charge. This balance is not taken lightly, and the weight of the decision is felt by all involved.

2. Chronology of Affidavits and Bail Proceedings

5. The contest has unfolded through a series of affidavits filed between July and August 2025, each side steadily building its case.
6. The first opposition came on 28th July 2025 when the Area Chief of Lemek Location, Stephen Kileyia, swore an affidavit warning that tensions were high between the accused's family and that of the deceased, both of whom reside in proximity. He expressed concern that releasing the accused would



inflame community hostilities and compromise peace. This tension adds urgency to the decision at hand.

7. On 1st August 2025, the prosecution filed two affidavits. Mr. Gitonga Murang'a, Assistant Director of Public Prosecutions, urged the Court to find that compelling reasons existed to deny bail, citing the seriousness of the charge and the risk to public order. On the same day, Chief Inspector Richard Simiyu, the investigating officer, deponed that during the accused's detention, members of the deceased's family stormed Narok Police Station, creating a security scare. He also highlighted how crowds gathered during the accused's court appearances, necessitating heightened security. These affidavits portrayed a highly volatile environment.
8. On 4th August 2025, the deceased's elder brother, Sankale Ole Nabaala, swore an affidavit contesting the pre-bail report by the probation officer, which had suggested the family did not oppose bail. He insisted that the family's actual position was one of strong objections and called for a fresh report.
9. On 8th August 2025, Sankale swore a further affidavit directly rebutting the accused's claims, questioning the authenticity of documents annexed in support of the bond application, and dismissing his disability status as a sympathy card. He reiterated that the family had lost their breadwinner and that their security concerns remained valid.
10. The defence took its formal turn on 18th August 2025, when the accused himself swore an affidavit. He emphasized his right to bail, underscored his status as a person with disability, pointed to his family obligations, and asserted that he was not a flight risk given his ties to property in Narok County. These personal circumstances are crucial in understanding the accused's situation and should be considered with empathy.
11. The contest culminated on 20th August 2025, when the widow of the deceased, Naanyu Leshan, swore an affidavit urging the Court to deny bail. She supported the affidavits filed earlier by her family, the prosecution, and the investigating officer. She emphasized the risk to both the accused and her family if the accused were to be released.
12. Thus, by the close of filings, the prosecution and the victim's family had consolidated their opposition on grounds of security, public order, and community tensions, while the defence countered by anchoring its case on constitutional entitlement to bail and the accused's personal circumstances.

3. Analysis And Determination.

13. Article 49(1)(h) of *the Constitution* guarantees every arrested person 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." The jurisprudence that has emerged from our superior courts has clarified that bail is a right, not a privilege, and compelling reasons must justify any denial of it.
14. The Bail and Bond Policy Guidelines (2015) further provide that in determining whether compelling reasons exist, the Court must consider, inter alia: the nature and seriousness of the offence, the strength of the prosecution's case, the possibility of interference with witnesses, the accused's character, antecedents and community ties, the likelihood of flight, and the security of both the accused and the community.
15. In *Republic v Danson Mgunya & Another* [2010] eKLR, the High Court emphasized that bail cannot be denied as a form of pre-trial punishment but must be assessed against concrete risks. Similarly, in *Republic v William Kipkorir Kipchirchir & Another* [2019] eKLR, the Court observed that hostility in the community and risk to an accused's personal safety may warrant strict bail conditions but not necessarily outright denial.



16. The duty of this Court, therefore, is to weigh the competing considerations of personal liberty and public interest, ensuring that justice is not compromised in either direction.
17. I have considered the affidavits filed, the submissions of counsel, and the probation officer's report. There is no dispute that the charge facing the accused is grave and attracts the ultimate penalty under the law. However, the seriousness of an offence, standing alone, is not a compelling reason to deny bail.
18. The strongest argument raised against the accused's release is the volatile environment within Lemek and Narok Town, where family members of the deceased and the accused co-exist. The affidavits of the Area Chief, the investigating officer, and the deceased's relatives demonstrate palpable tension and a likelihood of reprisals. This is compounded by the fact that tempers flared during earlier proceedings, and public demonstrations nearly erupted.
19. Be that as it may, claims that, if granted bond, the safety and security of the accused might be in jeopardy, is disturbing, mainly because Kenya is governed by the rule of law, and prides itself on a robust Bill of Rights which includes the right to be presumed innocent until proven guilty.
20. Anger upon the members of the family of the victim of murder or the respective community where the deceased came from, due to the heinous killing of their kin or member, comes naturally. However, it should be soothed by, among other things, bringing the accused to justice through due process and ensuring justice for the victims.
21. It is possible, amidst sorrow, to be moved by a sense of duty and an abhorrence of the outrageous and heinous act of the culprit without necessarily craving revenge. This helps the family to regain their dignified mood courageously and coolly while dealing with their loss of kin, thus getting quite apt healing and solace.
22. This may seem like a humorous or incongruent notion, but solace does not come through revenge or further letting of blood. Such craving is criminal and only breeds harm and death, and more pain. It is never a basis for denying an accused person his natural right to life arbitrarily or his constitutional right to liberty pending trial. Care must be taken not to elevate the ground of threat to the security of the accused by the members of the public or the victim's family, so as not to inadvertently encourage, promote, or condone violence, disorder, and usurping of law by individuals or groups of people.
23. In any case, the State must ensure the safety and security of its citizens, including the accused person. The police should take appropriate measures to ensure the security of the accused persons.
24. Therefore, this Court finds the argument regarding the security and safety of the accused to be without any factual basis and rejects it. See *Republic v Sawe* [2024] KEHC 4256 (KLR).
25. The accused has placed before this Court evidence of being a person with disability, having a fixed abode and property in Narok County, and supporting his family. These factors tilt in favour of finding that he is not a flight risk. Nothing has been placed before the Court to suggest he has attempted to interfere with witnesses or obstruct the course of justice.
26. The Court therefore finds that while compelling reasons have not been demonstrated to warrant outright denial of bail, the risks highlighted by the prosecution and the victim's family are real and cannot be ignored. The solution lies in imposing stringent conditions that strike a balance between liberty and security.



4. Orders

27. In light of the foregoing, I grant the accused, Paul Kanyinke Sena, an order for release on bond pending trial on the following strict terms:
1. The accused shall execute a bond of Kshs 2,500,000 with two sureties of a similar amount.
 2. The accused shall not set foot within Lemek Location or the deceased's homestead until further orders of this Court.
 3. The accused shall not directly or indirectly contact, intimidate, or interfere with any prosecution witness or members of the deceased's family. Any breach will lead to the immediate cancellation of bail/bond.
 4. The accused shall deposit with the Court his passport(s) and shall not leave the jurisdiction of this Court without leave of the Court.
 5. The accused shall be reporting to the DCI office (handling this matter) every first week of the month with effect from October 2025, until further orders of the court.
28. The accused shall accordingly be released upon fulfillment of the above terms.
29. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
29th DAY OF AUGUST 2025**

CHARLES KARIUKI

JUDGE

