



**Republic v Hussein (Criminal Case E011 of 2025)
[2025] KEHC 12433 (KLR) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E011 OF 2025
JN ONYIEGO, J
SEPTEMBER 4, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDIKADIR SAHAL HUSSEIN RESPONDENT

RULING

1. Accused person was charged with the offence of murder contrary to section 203 as read with Section 204 of the penal court. Particulars are that on 9-07-2025 at around, 0330hrs along Dagahaley-Welher road, Labsigale area, dadaab Sub-county, Garissa County he murdered Osman Abdullahi.
2. Upon arraignment in court, he pleaded not guilty. Consequently, he prayed for bail pending trial. In response, prosecution opposed the same. The court then ordered for pre-bail report which recommended against the release of the accused on bail citing grounds that; the victim’s family is still bitter; tension is still high; the victim’s family is likely to revenge; the accused is a gun holder being a police reservist; the accused is likely to jump bail and run to Somali.
3. Besides the negative report, the investigating officer swore an affidavit opposing accused’s release on bail citing grounds that; if released, he might flee to Somali where his family resides; there is a likelihood of revenge and that accused is a security risk;
4. Mr. Ewoi for the prosecution basically relied on the affidavit of objection and pre-bail report while Mr. Owino for the accused urged the court to grant bail as his constitutional right.
5. I have considered the application herein, the response thereof and oral submissions by both counsel. The only issue for determination is whether the prosecution has given compelling reasons to deny accused bail.



6. 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.
7. Compelling reasons are not defined in *the Constitution* in as much as Section 123A of the Criminal Procedure Code, provides the parameters for the grant of the right to bail as follows;
 - (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 fulfillment 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.
8. The considerations in determining whether or not to grant bail are also set out in the Kenya Judiciary's Bail and Bond Policy Guidelines and in the same breadth, it is not in doubt that the rationale behind any release of an accused person on bail or bond in Kenya is premised on the constitutional provision under Article 50 (2) (a) of *the Constitution* that an accused person is presumed innocent until the contrary is proved.
9. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
10. The question that seeks to be addressed is 'what is the meaning of compelling reasons.' In the case of Republic v Joktan Mayende & 3 Others [2012] eKLR, Mohamed Abdrurrahman Said & Another v Republic [2012] eKLR, Wilson Thirimba v DPP [2012] eKLR, among others, the respective Courts reverted to the meaning of the word 'compelling' which is defined in the Concise Oxford Dictionary, 9th Edition as 'rousing, strong, interest, attention, conviction or admiration'.
11. However, 'compelling reasons' is relative as it depends on the circumstances of each case. As such, the mere fact that the offence with which an accused is charged carries a serious sentence is not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond from appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will be able to attend the trial and whether or not a free and fair trial can be achieved notwithstanding the release of the accused on bond.
12. The imposition of terms of bail, if necessary, must similarly be for the purposes of ensuring the attendance of the accused at the trial and ought not to be based solely on the sentence that the accused



stands to serve if convicted. See Republic v Wycliffe Nyakwana Nyamweya (Criminal Revision 135 of 2016) (2016) KEHC 7930 (KLR) (Crim) (28 July 2016) (Ruling) where the court held that;

“It is therefore my view that the discretion to grant bail and set the conditions rests with the court. In all cases where the court is called upon to exercise its discretion in regard to whether or not it should grant bail pending trial, the most important consideration is whether the accused will attend court during trial”.

13. Similar position was re-emphasized by the court in Republic v Danson Mgunya & Another [2010] eKLR where M. K. Ibrahim J (as he then was) held thus;

“As a matter of fact, all other criteria are parasitic on the omnibus criterion on availability of the accused to stand trial. Arising directly from the omnibus criterion is the criterion of the nature and gravity of the offence. It is believed that the more serious the offence, the great incentive to jump bail although this is not invariably true. For instance, an accused person charged with capital offence is likely to flee from the jurisdiction of the court than one charged with a misdemeanour, like affray. The distinction between capital or non-capital offence is one way crystallized from the realization that the atrocity of the offence is directly proportional to the probability of the accused absconding. But the above is subject to qualification that there may be less serious offences in which the court may refuse bail, because of its nature.”

14. In exercising its discretion, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. As the fundamental consideration is the interests of justice, the court will lean in favour of liberty and grant bail where possible, provided the interests of justice will not be prejudiced by this. However, where the prosecution satisfies the Court that there exist compelling reasons which justify the denial of bail or bond, then the Court will deny the same.
15. As already noted, the primary consideration for bail is whether the accused will attend court for his trial. Therefore, if a compelling reason is demonstrated that the accused person is likely to fail to attend court proceedings, then the discretion should be denied. [See Kelly Kases Bunjika v Republic [2017] eKLR].
16. In the instant case, prosecution is opposed to the release of the accused on bail citing various grounds. Firstly, that the accused is a flight risk since his family resides in Somalia. This allegation was not challenged by the defence. Indeed, if accused person’s family resides in Somalia and he is in Kenya, chances of crossing over are higher. Given the porous nature of Kenya –Somalia border, it will be impossible to find him. On that ground alone, I am persuaded that it is compelling enough to deny the accused bond.
17. As regards bitterness by the victim’s family, the same is normal hence not sufficient ground to deny the accused bail. Concerning the question of possession of a firearm by the accused as police reservist, that is unfounded as that is an official firearm which by now must have been withdrawn.
18. Based on grounds of being a flight risk, it is compelling enough to deny the accused person bail. Accordingly, accused person shall remain in custody pending the hearing and determination of his case.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF SEPTEMBER 2025.

J. N. ONYIEGO

JUDGE

