

KENYA / JUDGMENT

Republic v YAM [2025] KEHC 16199 (KLR)

[2025] KEHC 16199 (KLR)**COURT**

High Court

BEFORE

DR Kavedza

CASE / FILE NUMBER

Criminal Case E007 of 2025

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Republic v YAM (Criminal Case E007 of 2025) [2025] KEHC 16199 (KLR) (6 November 2025)
(Ruling) Neutral citation:

[2025] KEHC 16199 (KLR) Republic of Kenya In the High Court at Kibera Criminal Case E007 of 2025 DR Kavedza, J November 6, 2025 Between Republic Prosecution and YAM Accused

Ruling

1. The accused, a minor aged 16 years, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code . The particulars of the offence are that on 23 rd May 2025, at around 1500 hours, at Midlands Estate South C, within Langata Sub-County, Nairobi County, jointly with another, not before the court, murdered M.Y.E. 2. On 26 th June 2025, the accused pleaded not guilty to the charge. Meanwhile, the accused is remanded in custody at Kamiti Youth Correction and Training Centre. 3. The accused moved this Court by a Notice of Motion dated 8th September 2025 seeking release on reasonable bail or bond terms pending trial. He contends that he is presumed innocent until proven guilty and, being a minor under the care of his mother, lacks the capacity to interfere with witnesses. He avers that the objection raised by the Investigating Officer on the ground of possible mob retaliation is a matter within police control and should not justify the denial of bail. 4. The accused further denies being a problematic student and relies on a medical report confirming that he suffers from Attention Deficit Hyperactivity Disorder (ADHD) and Autism Spectrum Disorder (ASD). He asserts that these conditions render him a vulnerable minor requiring special care, therapy, and education that are unavailable in remand facilities, and that continued detention would prejudice his right to health and education. 5. In opposition, No. 71582 PC William Kemboi, the Investigating Officer attached to DCI Langata, swore an affidavit opposing bail. He deponed that the accused and the deceased met for a fight, during which the accused fatally stabbed the deceased in the abdomen before fleeing with the murder weapon. He further averred that the accused's release would endanger his safety, as members of the public attempted to lynch him before he was rescued and confined in a clinic by a Good Samaritan. 6. The officer stated that the accused is a

Somali national who is in Kenya illegally, having neither a valid passport nor travel authorisation, and that immigration records do not reflect his lawful entry. He further deponed that the accused has no fixed residence or family ties in Kenya, is a flight risk, and is likely to interfere with witnesses, some of whom are his close friends. He therefore urged the Court to deny bail pending trial. 7. The deceased's father, Yassir Elnour Elnaim, swore an affidavit dated 4th August 2025 opposing the accused's release on bond. He deponed that he is the father of the deceased, Mutawakil Yassir Elnour, and associates himself fully with the Investigating Officer's position. He averred that the accused, charged with the murder of his son on 23rd May 2025, is a flight risk, having allegedly entered Kenya illegally and provided false information regarding his date of entry. 8. He further stated that the accused enrolled at Acadelite International School in March 2023 and had a history of indiscipline, including absenteeism, lateness, disobedience, and assault, which led to his expulsion. He alleged that the accused had planned the fight with the deceased, posted threatening messages on social media, and concealed a Danish passport. He contends that inconsistencies in the accused's background and immigration status show lack of candour and risk of absconding. He thus urges the Court to deny bail, asserting that the accused's release would undermine the course of justice. 9. Abdullahi Faisal Ahmed, a Kenyan citizen and former classmate of the accused, also swore an affidavit opposing bail. He deponed that he studied with the accused at Acadelite International School in South C and that the accused was repeatedly cited for indiscipline, including absenteeism, lateness, failure to wear uniform, and disobedience. He averred that the accused received several warnings and was eventually discontinued from the school after an assault incident. He further stated that the accused, being a foreigner without a fixed residence in Kenya, poses a serious flight risk. 10. The application for bail pending trial was canvassed through written submissions, which the Court has duly considered. The sole issue for determination is whether the prosecution has demonstrated compelling reasons to warrant denial of bail pending trial. 11. Article 49(1)(h) of the Constitution guarantees an arrested person the right to bail or bond on reasonable conditions, unless there are compelling reasons to deny release. This right is not absolute. Under section 123A of the Criminal Procedure Code (Cap 75), the burden of proving compelling reasons lies with the State. 12. In exercising discretion under Article 49(1)(h), the court must consider factors set out in section 123A, including the seriousness of the offence, the accused's character and past conduct, previous compliance with bail terms, and the strength of the prosecution's evidence. The court may also deny bail where there is a likelihood that the accused will fail to appear in court or where custody is necessary for the accused's safety. 13. Each bail decision must be guided by the interests of justice, and the conditions imposed must be reasonable, as required by the Constitution. 14. The probation report on record indicated that the primary victim was a 17-year-old Kenyan male, the last born in his family, and in his final year of the IGCSE curriculum. He was well known to the accused, a peer with whom he occasionally prayed with. His death caused profound anguish to his family, who continue to grieve and strongly object to the accused's release on bond. They reported attempts at out-of-court settlement through Islamic arbitration, which they declined, preferring justice through the court process. 15. The accused is a 17-year-old

Somali national, previously enrolled in an Islamic school in Nairobi. He has no known dependants, and claims to have been diagnosed with autism. He is neither alcohol nor drug dependent. While his family offered a Kenyan surety and stated willingness to meet any bond terms, they failed to provide verified asset valuations. His duration of stay in Kenya could not be ascertained, and he lacks permanent residence or deep-rooted local family ties.

16. The investigative agencies opposed his release citing that he was a flight risk. They contended that the accused's only form of identification is a Somali birth certificate. Witnesses have reported threats from the accused's relatives, leading some to relocate or recant testimonies. Concerns were raised about safety risks to witnesses and potential disruptions to public order.

17. The accused's circumstances, namely that he poses a threat to witnesses and public safety, is a flight risk, and his medical condition are central issues in the determination of this bail application. The probation report indicates that some witnesses have been threatened by members of the accused's family, leading them to relocate or withdraw their testimony out of fear. There is credible concern within the community regarding possible reprisals and the risk of public disorder. The Court is satisfied that releasing the accused at this stage would endanger witness safety, disturb public order, and compromise the proper administration of justice.

18. In addition, the accused is a Somali national whose immigration status remains unclear. In cases where the accused is a foreigner, the courts have come up with certain principles to be taken into further consideration in determining whether or not to release the accused on bail/bond pending trial. The cases this court has considered include *Republic v Kokonya Muhssin* [2013] eKLR, *Republic v Dwight Sagaray & 4 Others* [2013] eKLR, *Republic v Makoy Madhak Deer* [2015] eKLR, and *Republic v Richard David Alden* [2016] eKLR.

19. The Court reiterates that the right to bail is a constitutional entitlement under Article 49(1)(h) of the Constitution, subject only to the existence of compelling reasons. The mere fact that an accused person is a foreign national does not automatically disentitle them to bail. Each case must be assessed on its own merits, taking into account factors such as the accused's residence status, the nature and gravity of the offence, the strength of the evidence, and the likelihood of absconding or interfering with witnesses. The Court must strike a balance between the constitutional presumption of innocence and the public interest in ensuring the accused's attendance at trial and the due administration of justice.

20. In this case, the accused's period of residence in Kenya remains unverified, and his only identification document is a Somali birth certificate. Although it was alleged that his father is a Kenyan citizen residing in Eastleigh, he has neither appeared in court nor shown any interest in the accused's welfare.

21. There is therefore no proof of lawful entry, permanent residence, or family ties within the jurisdiction. The accused lacks a fixed abode and any tangible social or economic connection to Kenya. The risk of flight is real rather than speculative. Further, the proposed sureties have not shown sufficient financial or personal capacity to secure his attendance, and assurances from family abroad carry no binding legal force in this jurisdiction.

22. The Court has also considered the accused's reported diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Autism Spectrum Disorder (ASD). While the Court is mindful of his right to health and special protection as a minor, no treatment or

supervision plan has been presented to show how his medical needs will be met if released. The absence of a structured care framework raises concern not only for the accused's welfare but also for the ability of his guardians to ensure compliance with bail conditions. 23. The Court further notes the seriousness of the charge of murder, which carries a mandatory sentence of death upon conviction. Such gravity increases the incentive to abscond. Coupled with the accused's unclear immigration status, lack of fixed residence, proximity to key witnesses, and the potential threat to his own safety arising from the public hostility demonstrated at the time of arrest, the cumulative effect presents compelling grounds against his release. 24. In view of the foregoing, the Court finds that the prosecution has established sufficient and compelling reasons to justify the denial of bail. The application dated 8 th September 2025 is accordingly dismissed. The accused shall remain in custody pending the hearing and determination of the case. The Court, directs that the accused continue to receive appropriate medical assessment and care consistent with his needs while in custody. RULING DATED AND DELIVERED VIRTUALLY THIS 6 TH DAY OF NOVEMBER 2025 D. KAVEDZA JUDGE In the presence of: Ms. Timoi for the State Mr. Bulle for the Accused Karimi Court Assistant.

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