



**Republic v Kombo & another (Criminal Case E010 of 2024)
[2024] KEHC 8291 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E010 OF 2024
TA ODERA, J
JUNE 24, 2024**

BETWEEN

REPUBLIC REPUBLIC

AND

SAMUEL MAGETO KOMBO 1ST ACCUSED

MOFFAT OMBIRO 2ND ACCUSED

RULING

Introduction

1. The Accused person herein were charged with the offense of Murder were charged with the offense of murder contrary to section 203 as read together with section 204 of the *Penal code*. The Particulars of the offense were that on 4th January, 2024 near Maraba Shopping Centre within Kenyena Sub-County of Kisii County, jointly with another not before murdered Andrew Ombui Anyieni.
2. The accused person took plea on 11th April, 2024 wherein they all pleaded not guilty. The Accused person made an oral Application to be released on bond which Application is the Subject of this Ruling. In Response to the Application, the prosecutor stated that the state was not opposed to the accused persons being released on bond but requested for a pre-bail report considering that the accused and the family of the victims come from the same area and thus their security was not guaranteed.
3. This court thus proceeded to order for a pre-bail report to be prepared by the probation officer. The pre bail reports for both the accused persons were filed on 22nd May, 2023.

Determination

4. I have considered the application, the submissions in opposition and the pre-bail report.



5. The Probation Report recommends that the Accused Person is not suitable for bond because his life will be in danger once released on bond/bail since the public is still very bitter about the incident. The probation officer, Cecil W. Ochieng' in his report stated that the community through the local administration and elders, maintained that it would be risky for the accused to be granted bond/bail terms at this time, given the tension that is lingering, as one of the suspects is still at large. He stated too that common view was that the release of the accused would disrupt peace in the community given that the recent incident, which led to the matter at hand, is still very fresh in the memory of the residents. He contended that community was therefore hostile and the accused may not be safe if granted release on bond/bail terms. He however noted the situation at home was however subject to change and this could be reviewed later.
6. Article 49(1)(h) of the *Constitution* provides that an Arrested Person has 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 court in the case *Republic v Danford Kabage Mwangi* (2016) eKLR set out the following as the factors, to be considered when the court considering bail bond application: -
 - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - b. The strength of the prosecution case.
 - c. Character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. Likelihood of interfering with witnesses.
 - f. The need to protect the victim(s) of the crime.
 - g. The relationship between the accused person and potential witnesses.
 - h. Child offenders.
 - i. The accused person is a flight risk.
 - j. Whether accused person is gainfully employed.
 - k. Public order, peace or security.
 - l. Protection of the accused person.
7. Section 123A of the *criminal procedure code* sets out the following as compelling reasons to deny an accused person bond;
 1. The accused is a flight risk.
 2. The accused is likely to interfere with witnesses.
 3. The accused's life would be in danger if he is released.
 4. The accused person is likely to endanger peace and national security.
 5. It is in the public interest that the accused person be denied bond.
8. In this particular case the circumstances of this offence the community attitude the attitude of the family of the deceased and also that of the accused are summarized briefly in the pre-bail report by the probation officer. It is very clear from this report that it would be exposing both accused persons to



danger if they are released on bond. Not only is the victim's family strongly opposed to the accused being released on bail but also the community where both of them reside. The Probation Officer is very clear that there is a real danger of a revenge attack or retaliation against the accused persons. It is therefore clear the risk to the Applicants' life is a compelling reason for denying them bond. Whilst the State has an obligation to protect all its citizenry, it would be foolhardy for this court, to release an accused person where there is real evidence that the life of the said accused person would be in danger.

9. I am persuaded by the decision in *Rotich v Republic* [2022] KEHC 616 (KLR). In that case, the Court was faced with a situation where the accused person was charged with murder. The prosecution opposed his application to be released on bail/bond since there was a lot of tension between the family of the applicant and the neighbors which forced the applicant's family to vacate their land. The Court in that case held that the fear for the applicant's life was well-founded in view of the applicant's family being evicted from their land by irate neighbors.
10. The probation officer in his report observed that the situation may change with time. Should that happen, it will be handled as it arises.
11. In the end, the Accused Persons application is disallowed at this stage. They shall be remanded in custody till the situation at home changes or further orders of this court.
12. In the interests of justice, it is only fair that the matter proceeds on priority basis.
13. It is so ordered.

DELIVERED, VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:-

Accused

Mr. Kiarianki for both accused

Koima for the State

Oigo : Court Assistant

Kirianki: May the probation officer visit their home after 30 days to re-assess the situation.

Order: granted. Mention on 17.9.24 for the 2nd pre-bail report. Remanded in custody.

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T.A ODERA

JUDGE

24.6.24

