



**Gachuru & 2 others v Republic (Criminal Case 25 of 2019)  
[2024] KEHC 9263 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9263 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 25 OF 2019  
CW GITHUA, J  
JULY 26, 2024**

**BETWEEN**

**RUFUS NDIRANGU GACHURU ..... 1<sup>ST</sup> APPLICANT**

**GEORGE MUHOHO KARANJA ..... 2<sup>ND</sup> APPLICANT**

**HENRY MWAURA MUKURU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 7<sup>th</sup> March 2024 in which Mr. Gioche, learned counsel for the three accused persons sought review of the orders made by this court in a ruling delivered on 5<sup>th</sup> October 2023 . In that ruling, the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were denied bail or bond on grounds that the prosecution had established compelling reasons to justify their continued pre-trial detention as it had proved that if released, their life or safety would be in jeopardy given existence of bitter hostility towards them by members of their community.
2. In the same ruling, the 1<sup>st</sup> accused was granted bond of Kshs. 500,000 together with one surety of a similar amount. His release was however subject to several conditions which were clearly stipulated in the said ruling.
3. In the current application, learned counsel Mr. Gioche urges this court to review the bond terms granted to the 1<sup>st</sup> accused by reducing the amount of bond set by the court on grounds that he has failed to raise a surety who could deposit a security valued at Kshs. 500,000 as he could only afford a security worth Kshs. 150,000. It was also alleged that the 1<sup>st</sup> accused was diabetic and hypertensive and that he required special diet and treatment.



4. As regards the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons, learned counsel contended that they had secured alternative places of abode away from the locus in quo where they would reside during pendency of the trial; that in the circumstances, the reason they were previously denied bond was no longer applicable and that no compelling reason currently existed to warrant denial of their right to bond. The court was urged to admit them to bond on reasonable terms pending conclusion of their trial.
5. The application was opposed by the state through an affidavit sworn on 4<sup>th</sup> June 2024 by one of the investigating officers CPL. Monicah Momanyi. CPL. Momanyi averred that the community in Ngararia area was not ready to receive the accused persons back in their midst and as such, if released, their safety could not be guaranteed. She further deposed that if released, the accused persons were likely to interfere with prosecution witnesses who were their family members and neighbours and that given the gravity of the offence, they were likely to abscond.
6. The application was argued orally before me on 5<sup>th</sup> June 2024.  
During the hearing, Mr. Gioche replicated the depositions made in the affidavit sworn in support of the application. Learned prosecution counsel, Ms. Muriu on her part opposed review of the bond terms granted to the 1<sup>st</sup> accused arguing that they were fair and reasonable; that when setting the said terms, the court must have considered the seriousness of the offence and views of the victims.
7. The application by the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons was not opposed by the state. Ms. Muriu noted that as they had secured alternative accommodation, they could be admitted to bond on condition that they did not return to the village in which the offence was committed until conclusion of their case.
8. Having duly considered the application, all the affidavits filed in support and in opposition to the application alongside the rival oral submissions made on behalf of the parties, I find that there is no doubt that both the 2<sup>nd</sup> and 3<sup>rd</sup> accused have been offered alternative places of abode by their relatives far from Waitwa village where the multiple murders in this case occurred.
9. Mr. George Njuguna Muhuhu swore an affidavit on 14<sup>th</sup> February 2024 in which he deposed that he was an uncle to the 2<sup>nd</sup> accused and he was willing to accommodate him in his home at Kwa Maiko village, Kiambu County and that he was ready to ensure that he attended the court as and when required.
10. As regards the 3<sup>rd</sup> accused person, his mother Ms. Susan Wambui Mukuru also swore an affidavit on 26<sup>th</sup> February 2024 in which she expressed willingness to settle the 3<sup>rd</sup> Accused in her land at Kangai within Kirinyaga Sub-county. She also pledged to ensure that if released, the 3<sup>rd</sup> accused will not abscond trial.
11. In my ruling of 5<sup>th</sup> October 2023, I denied the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons bond for the sole reason that hostility towards them from members of their community at waitwa village had persisted from the time of their arrest to the time their application for bond was being considered and if released, their safety would be prejudiced. I gave them an option of renewing their application if the hostility subsided or they secured alternative accommodation from their places of abode at Waitwa village which they have now managed to do. In the premises, I see no good reason to justify their continued pre-trial detention because if released, they would be expected to keep their promise of residing in Kiambu and Kirinyaga Counties respectively which are far from the locus in quo and where they are not likely to face any hostility.
12. As far as the 1<sup>st</sup> accused's application is concerned, I agree with the prosecution that the bond terms set by the court on 5<sup>th</sup> October 2023 are just and reasonable considering the gravity of the offences preferred against the accused persons. The accused persons are facing two counts of the offence of murder which on conviction attracts the death penalty as the maximum sentence.



13. Needless to state, all accused persons have a constitutional right to bail or bond irrespective of the offence charged but in setting bond terms, the court must take into account the seriousness of the offence charged among other reasons. In this case, I am satisfied that the terms granted to the 1<sup>st</sup> accused are very lenient given nature of the charges preferred against him.
14. I am cognizant of the claim that the accused is unwell but in my view, this is not sufficient reason to justify review of his bond terms since he can still continue accessing treatment at the Murang'a Level 5 Hospital pending compliance with the bond terms.
15. The upshot of the above is that the application dated 7<sup>th</sup> March 2024 partially succeeds to the extent that the prayer by the 1<sup>st</sup> accused fails while the prayer by the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons is allowed. Consequently, the bond terms granted in favour of the 1st accused will remain as set on 5<sup>th</sup> October 2023 while the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons are granted bond on the following terms;
  - i. They will each be released upon executing a bond of Kshs. 500,000 together with one surety of a similar amount. The surety for 2<sup>nd</sup> accused shall be Mr. George Njuguna Muhuhu while 3<sup>rd</sup> accused's mother, Ms. Susan Wambui Mukuru shall be his surety. Both sureties shall deposit requisite securities.
  - ii. Upon release, both accused persons shall reside in their identified new places of abode and shall not go back to Waitwa Village during the pendency of their trial.
  - iii. Both accused persons shall attend this court if and when required without fail.
  - iv. Failure to comply with any of the above conditions may lead to cancellation of their bonds.
  - v. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 26<sup>TH</sup> DAY OF JULY 2024.**

**C. W. GITHUA**

**JUDGE**

In the Presence of :

Ms Muriu for state

Mr. gioche for accused

Susan – Court Assistant

