



**Kamau v Republic (Criminal Case E030 of 2023)
[2024] KEHC 9264 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9264 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E030 OF 2023
CW GITHUA, J
JULY 26, 2024**

BETWEEN

JOHN MACHARIA KAMAU ALIAS JONAH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, John Macharia Kamau alias Jonah is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars allege that on the night of 18th/19th November 2023, at Rukubi village, Kimakia sub-location in Murang'a County, he murdered Mary Waruguru.
2. Upon being arraigned in court, he denied the charges and his learned Counsel, Ms. Waititu, applied for his admission to bond or bail pending trial.
3. The prosecution opposed the application through an affidavit sworn on 30th January 2024 by CPL. Wilmos Ochoko who is the investigating officer in this case. CPL. Ochoko deposed that if released, the accused was likely to interfere or intimidate proposed prosecution witnesses who are his neighbours and family members and that given the gravity of the offence, he was likely to abscond.
4. In response, Ms. Waititu filed a replying affidavit sworn on 20th February 2024. She averred that the accused was not a flight risk since he had a fixed abode at Pluto in Gatanga sub county; that he was ready to abide by any conditions the court would peg to his release; that the right to bail is a constitutional right and this court should exercise its discretion and admit him to bond pending trial.
5. The application was argued orally before me on 22nd May 2024. During the hearing, Ms. Waititu and learned prosecution counsel Ms. Muriu, in their oral submissions largely relied on the averments made in the affidavits sworn in support and in opposition to the application as well as contents of a pre-bail report filed on 6th March 2024.



6. It is trite that under Article 49 (1) (h) of the *Constitution* of Kenya 2010, an arrested or accused person has a right to be released on bail or bond on reasonable conditions pending trial unless there are compelling reasons not to be released. The constitutional right to bond or bail is therefore a limited right which can be curtailed by existence of compelling reasons which in the court's view are sufficiently weighty to justify denial of the exercise of that right.
7. It is now settled law that if the prosecution was opposed to the release of an accused person on bond, the onus of establishing existence of compelling reasons that would militate against grant of bail falls squarely on its shoulders. The *Criminal Procedure Code* at Section 123 A (2) and The Judiciary Bail and Bond Policy guidelines 2015 provides guidance on what would constitute compelling reasons to warrant denial of bond but because no two cases can be exactly alike, each case must be decided on its own set of facts and circumstances.
8. That said, some of the factors that the court ought to consider when exercising its discretion in determining applications like the present one includes: the nature and seriousness of the offence; whether the accused was likely to interfere with witnesses or evidence; whether he was likely to endanger safety of the victims or the public; whether his own safety was likely to be in danger as well as views of the victims. However, the overarching consideration which the court should bear in mind is whether if released, the accused would turn up for his trial and whether there were substantial grounds to believe that he was likely to abscond if released on bail or bond.
9. In this case, the prosecution has not placed before the court any material to show that if released, the accused was likely to abscond. The fact that the accused is facing a serious charge of murder is not by itself a ground upon which this court can base a finding that if released the accused was likely to abscond. The Constitution guarantees to each accused person the right to bond irrespective of the gravity of the offence charged. The prosecution ought to have presented concrete evidence to persuade the court that there was a real likelihood that if released, the accused was likely to abscond which it has failed to do. The prosecution has not even contested the accused person's claim that he has a fixed abode at Rukubi village.
10. Another reason cited by the prosecution in its opposition to the application is that if released, the accused was likely to interfere or intimidate its witnesses. It was alleged that the accused was well known to the witnesses as they were his neighbours and family members. However, the prosecution did not avail any evidence to substantiate this claim. It remained a mere allegation. As was stated by my sister Korir J in *Republic v Dwight Sagaray & 4 others* (2013) eKLR, it is not enough for the prosecution to merely state that the accused is likely to interfere with prosecution witnesses. The prosecution must place before the court material that demonstrated actual or perceived interference; such as the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses, among others. No such evidence has been placed before this court.
11. The above notwithstanding, I have perused the pre- bail report dated 5th March 2024. It is clear from the report that although the victim's family did not express any position regarding whether or not they were opposed to release of the accused on bail, his immediate family members and his community at large were vehemently opposed to his release. They described him as a violent person and a trouble maker who had been involved in physical fights with his siblings and late parents. They expressed fear for their life and safety should the accused be released on bond and claimed that his release would force them to flee from their home.



12. The above pre-bail report was filed in court on 6th March 2024 long before the application was heard and the defence though aware of its content did not challenge any of the findings made therein. In the premises, it is my finding that the report is credible and represents the true position on the ground.
13. Given the foregoing and the fact that there is no evidence that the accused has an alternative place of abode far away from Rukubi village where he can reside during the pendency of his trial, I have come to the conclusion that it is not prudent to admit him to bond or bail because if released, he will go back to his home where he is likely to face hostility from his immediate family members and his community which may escalate to a breach of the peace and its attendant negative consequences. This to me is a compelling reason to justify denial of bond to the accused in this case.
14. For the above reasons, I hereby exercise my discretion and decline to admit the accused to bond but he can renew his application should he secure an alternative place of abode.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURAN'GA THIS 26TH DAY OF JULY 2024.

C. W. GITHUA

JUDGE

In the presence of :

The accused

Ms. Muriu for the state

Ms. Waititu for the accused

Ms. Susan Waiganjo Court Assistant

