



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ntuitai v Republic (Criminal Case E003 of 2021)  
[2024] KEHC 9602 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9602 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E003 OF 2021  
CW GITHUA, J  
JULY 26, 2024**

**BETWEEN**

**ALBERT LELEI NTUITAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The accused, Albert Lelei Ntuitai is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 26<sup>th</sup> June 2016 at Muthithi Police Station, Muthithi Location in Kigumo Sub-County of Murang'a County, the accused murdered Henry Odongo Sindani.
2. The court record shows that the accused was arraigned in court on 9<sup>th</sup> February 2021 and he denied the charges. Through his learned counsel, Ms. Mukami Boore, the accused applied to be admitted to bail or bond on reasonable terms pending the hearing and determination of his case. The application was heard before Hon. Kimondo J who in a ruling delivered on 20<sup>th</sup> April 2021 declined to admit the accused on bond after finding that he was a flight risk.
3. The record also reveals that thereafter, the parties engaged in plea bargain negotiations which collapsed on 8<sup>th</sup> December 2021 after the state rejected the accused's offer for plea bargain.
4. On 20<sup>th</sup> June 2022, the accused filed an application dated 17<sup>th</sup> June 2022 seeking to be admitted to bond pending conclusion of his trial. For undisclosed reasons, the application was filed by the accused in person despite the fact that he still had counsel on record. Ms. Boore for the accused however appeared on the date the application was scheduled for hearing and argued it on behalf of the accused. The state was represented by learned prosecution counsel, Ms. Muriu.
5. During the hearing, Ms. Boore relied on the supporting and further affidavits sworn by the accused on 17<sup>th</sup> June 2022 and 16<sup>th</sup> April 2024 respectively. She further urged the court to note that the accused



was presumed innocent until proved guilty and that he was entitled to his constitutional right to bond or bail. She further denied the prosecution's claim that the accused was a flight risk stating that the accused had a fixed abode at Narok where he resided with his family.

6. In opposing the application, Ms. Muriu re-iterated the depositions made by the investigating officer PC Mike Kosgey in the affidavit sworn on 23<sup>rd</sup> November 2023 to the effect that the accused was a flight risk having fled from Muthithi Police station where the offence was committed and where he had been serving as a Police Officer; that he was arrested six years later in Narok. PC Kosgey also deposed that the accused's place of abode was unknown.
7. I have considered the application together with the several affidavits on record and the oral submissions made on behalf of the parties. I have also read and understood the pre-bail report dated 18<sup>th</sup> January 2024. Having done so, I find that although the accused has a constitutional right to bail under Article 49 (1) (h) of *the Constitution* of Kenya 2010, that right is not absolute and is limited by existence of compelling reasons. The question that then falls for my determination in this application is whether the prosecution has demonstrated existence of compelling reasons to justify denial of the accused's right to bond pending trial.
8. At the outset, I wish to point out that there is no universal measurement or scientific method of establishing what constitutes compelling reasons basically because no two cases can be exactly similar. Consequently, each case has to be decided on its own facts and circumstances.
9. Section 123 A (2) of the *Criminal Procedure Code* and *The Judiciary Bail and Bond Policy guidelines 2015* provides a general guideline of what factors courts should consider when determining applications for bond pending trial. The same were summarised by Lesiit J (as she then was) in *Republic V Richard David Alden* [2016] eKLR as follows:

“*The Bail and Bond Policy Guidelines* were formulated specifically to guide the police and judicial officers in the administration of bail and bond. The guidelines set out what the courts should bear in mind when considering an application for bail. They are similar to those set out under section 123A of the *Criminal Procedure Code*. These general considerations are: the nature of the offence; strength prosecution case; character accused and antecedents; failure by the accused to observe previous bail or bond; witness interference; protection of the victim; relationship between the accused and the potential witness (es); whether the accused is a child offender; whether the accused is a flight risk; if the accused is gainfully employed; public order; peace security; and whether there is need for the protection of accused person.”
10. In addition to the above, the court in the exercise of its discretion in deciding whether or not to grant bail should balance the reasons advanced in opposition to bail with the accused's constitutional right to liberty; the right to be presumed innocent until proved guilty and the rights of the victims. But the all-encompassing consideration for the court is whether if released, the accused will turn up for his trial and whether there were substantial grounds to believe that if released, the accused will abscond.
11. In this case, it is alleged that the accused was a flight risk because after the offence was committed, he went into hiding until the 23<sup>rd</sup> of January 2021 when he was arrested by detectives in Narok South within Narok county. This was over four years after the offence was committed. The prosecution has maintained that for this reason, the accused ought to be denied bail having previously shown a disposition to abscond.



12. In his supporting affidavit, though not explaining his whereabouts for the period in contention, the accused denied that he was a flight risk and pledged to attend court whenever he was required to do so and to abide by any condition the court may impose as a precondition to his release. In his further affidavit, he averred that he had a fixed abode in Narok where he lived with his family; that his health had deteriorated while in custody and it was in the interest of justice to admit him to bail so that he could access proper medical attention which was not available in prison.
  13. I have looked at the pre- bail report filed on 23<sup>rd</sup> January 2024 which confirms that the accused not only has a fixed abode in Narok but also a supportive family which was willing to ensure that he attended court whenever required. The report also shows that the victim's family is opposed to accused's admission to bond because they are still bitter with him for causing the death of their loved one. Though am sympathetic to the emotional anguish the victim's family must have gone through following the death of the deceased, the law is that although the accused was charged with the offence, he was at this stage a suspect and was still presumed innocent until proved guilty.
  14. I have noted from the record that the accused has been in custody since 2<sup>nd</sup> February 2021 and to date, over three years later, his trial is yet to commence. Though the prosecution's apprehension that the accused if released may abscond given his previous conduct is appreciated, this apprehension must be juxtaposed with the accused's pledge not to abscond and his right to liberty and presumption of innocence. Having already spent over three years in lawful custody and it is impossible to tell how long it would take to have his case determined given that hearing is yet to start and given the chronic congestion in the court diary, I am inclined to find that the solution to the prosecution's concern is not to continue denying the accused bond but to set stringent bond terms that that would minimize the risk of his absconding trial or compel his attendance in court for his trial. This in my view would be the best way to serve the interests of justice for both parties.
  15. In view of the foregoing, I hereby exercise my discretion and admit the accused to bond on the following terms;
    - i. The accused will be released upon signing bond of Kshs. 1,000,000 together with a surety of a similar amount and an additional contact person.  
The surety and contact person will be approved by the Deputy Registrar of this court.
    - ii. Upon his release, the accused will attend this court if and when required without fail.
    - iii. The accused will attend the Deputy Registrar for mention once in every two months with effect from 2<sup>nd</sup> September 2024 until further orders from this court.
    - iv. Failure to comply with any of the above conditions may lead to cancellation of accused's bond.
- 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 :

The accused

Ms. Muriu for the State

Ms. Susan Waiganjo, Court Assistant

