



**Republic v Hussein (Criminal Case E012 of 2023)
[2024] KEHC 10199 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E012 OF 2023
JN ONYIEGO, J
AUGUST 15, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ADEN NUNOW HUSSEIN RESPONDENT

RULING

1. The applicant/accused herein is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Having pleaded not guilty to the charge, a plea of not guilty was entered. Consequently, He made an application to be released on bail pending trial. His application was however opposed by the prosecution on grounds that the victims’ family and the community at large are against his release and that for his own safety, he should remain in custody. It was further contended that the pre-bail report is not favourable.
2. In response, Mr. Bosire counsel representing the accused submitted that, bail is a constitutional right to which the accused is entitled. Mr. Bosire contended that if released, accused is ready to stay away from the hostile community hence his safety is assured. That the accused is ready to abide by any terms the court may impose and that security reasons alone should not override a constitutional right.
3. In the pre-bail report dated 05.07.2024, the probation officer stated that the accused person’s family were willing to secure his bond however, they were concerned about his safety due to the hostility of the victim’s family and the community members. It was recommended therefore that grant of bond be deferred to a later date to allow the victim’s family and the community time to calm down.
4. I have considered the application herein, objection thereof and oral submissions by both parties. Release of an accused person on bail pending trial is anchored under Article 49(1)(h) of the Constitution which guarantees the right of an arrested person “to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”



Therefore, the only issue in the matter before me is whether the prosecution has demonstrated compelling reason(s) as to why the applicant should not be released on bond or bail.

5. However, it is worth noting that the above provision is not absolute. The right to be released on bail pending trial is subject to certain conditions. Section 123A (1) of the *Criminal Procedure Code* provides factors to be taken into consideration in determining whether an accused person should be released on bail or not. Those factors include; the nature or seriousness of the offence; the character, antecedents, associations and community ties of the accused person; the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and, the strength of the evidence.
6. According to Sub-Section (2) of the same Section, an accused person can only be denied bail if he has previously been granted bail and failed to surrender to custody or if it is necessary for him to be kept in custody for his own protection. See *Waititu vs Republic* [2021] KESC 11 (KLR) and *Kenyan Judiciary's Bail and Bond Policy Guidelines* issued in March, 2015 at pages 16 to 19. What is critical therefore, is the conviction by the court that if released on bail, accused person will turn up in court.
7. It is the prosecution's case that the pre-bail report confirmed its fears that the applicant's safety is not guaranteed as the victim's family and the community were still bitter. Curiously, even the accused person's family is opposed to the accused being released on account of his own security. In response, counsel for the accused urged that once released, the accused person will move and stay away from the hostile community.
8. In view of the response by counsel for the accused, the question that comes to my mind is where exactly will the accused person stay noting that the family is not ready to have him at this point in time? As is often stated, the right to bond is not an absolute right. It can be denied where the prosecution has advanced sufficient reasons for denying an accused person bond.
9. It is generally expected that the hostility shall subside after some time. I am persuaded to believe that, it is not safe to release the accused on bail at this juncture for the sake of his own security. In my view, that is a compelling reason to deny him bond. He shall however be at liberty to seek review at some stage if necessary. To that extent, the application herein is rejected.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 15TH DAY OF AUGUST 2024

J. N. ONYIEGO
JUDGE

