



**Republic v Wambui (Criminal Case E018 of 2023)
[2024] KEHC 11213 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE E018 OF 2023
DKN MAGARE, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN STEVE NDUMIA WAMBUI ACCUSED

RULING

1. This is a ruling on bond. The accused person’s application was orally made in court on 11/12/2023.
2. The accused person is facing the charge of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence were stated in the information dated 24/11/2023 as follows:-

The Accused, on the night of 3rd and 4th September 2023 at Kamahoru village, Gathuthi Sub-location, Thegenge Location, Tetu Sub-county within Nyeri County in the Republic of Kenya unlawfully murdered Peris Nyaguthii Mwangi.
3. In response to the application for bail, the Investigating Officer filed an affidavit sworn on 20/2/2024 opposing the bail on the following grounds:-
 - a. The deceased was a close neighbor to the Applicant.
 - b. To safeguard security of the Accused as the ground is very hostile.
 - c. The Accused is a high flight risk having attempted to escape from custody during the arrest.
 - d. There is likelihood of interference with witnesses.
4. There are also no submissions filed by both parties on the court’s record.



Analysis

5. The issue is whether the Accused person herein should be released on bail pending trial.
6. Article 49(1)(h) of *the Constitution* of Kenya provides;
An arrested person has the right –
 - (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
7. Section 123(3) of the Criminal Procedure Code provides;
The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.
8. Section 123A of the Criminal Procedure Code provides;
 - (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person -
 - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody.
9. In *Mohamood Chute Wote & 2 others v Republic* [2021] eKLR Hon. Grace Nzioka expressed herself on the Article 49(1)(h) and section 123 of the Criminal Procedure Code as follows;

The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable? In my considered opinion, the starting point is the recognition of the fact that, under Article 50(2) of *the Constitution* of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.
10. Further, at Paragraph 3.1. (d) of the Bail and Bond Policy Guidelines (at page 9) it is provided that:
 - d) “...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person



for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.

Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case.”

11. The Prosecution’s case is that the accused person is a close neighbor to the deceased person. It is also deposed that the accused person is a flight risk having attempted to escape from custody during arrest and that the accused will also pose a safety risk to the witnesses who are also neighbors.
12. For the safety of the accused, it is deposed that denial of bail is in his interest as the ground is very hostile to him.
13. The averments by the prosecution are not controverted by the accused person. The accused is said to have attempted to escape on arrest. He was present at the time of arrest but chose to keep quiet on that aspect. The right to remain silent relates to the offence that one is charged with or a possibility of being charged.
14. The right to reasonable bail and bond terms is underpinned in the Judiciary’s Bail and Bond Policy Guidelines as follows:

“Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.”
15. In my view, justice in bail applications also denotes justice to the Accused person and justice to the victim of crime, that is, the victim and the accused get justice. It is a two-way traffic. Like to the Accused person, the way to the victim’s justice is through a fair hearing and fair trial where witnesses are enabled to attend court to freely testify on the truth of what they know, saw, or heard. If an accused person is likely to abscond, then the court will be doing an injustice to the victim of the offence if it releases him on bond only for him to make the trial impossible and so is the case if the Accused person is likely to interfere with the witnesses or his release jeopardizes his own safety due to public hostility.
16. Notwithstanding, the Accused before this court is assured of a fair hearing and a fair trial. He remains innocent until proven guilty as no evidence has been placed before this court yet on his culpability.
17. However, as there is sufficient information which this court believes from the Investigating Officer’s sworn affidavit that the accused person is likely to abscond if released on bond/bail, and that being close neighbor to the deceased there is reasonable apprehension of his interference with the witnesses as well as hostility to the Accused person himself, I find that the accused person is not suitable for release on bail/bond pending trial.
18. Accordingly, I decline to grant the prayer for release of the accused person John Steve Ndumia Wambui on bail/bond pending trial and I dismiss the application. The accused shall remain in custody until the next hearing. However, the court will consider his application for bail in future based on the changing circumstances.



Determination

19. I therefore make the following orders: -

- a. The application for bail pending trial is not merited and is dismissed.
- b. In the circumstances, I make no order as to costs.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF SEPTEMBER, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Ms. Kaniu for the State

Accused person/Applicant – present

Court Assistant – Jedidah

