



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Adede (Criminal Case E026 of 2024)
[2024] KEHC 13372 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E026 OF 2024**

DK KEMEL, J

OCTOBER 31, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

GEORGE OCHIENG ADEDE ACCUSED

RULING

1. The accused herein George Ochieng Adede has been charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 7th day of May, 2024 at Nyangoma Division, Bondo Sub-County within Siaya County, he murdered Sween Awino.
2. The accused denied the charge and subsequently, the matter was ordered to go for trial. Learned counsel for the accused has made an oral application for the release of the accused on bond pending trial. Learned counsel for the prosecution on the other hand indicated her opposition to the release of the accused on bond and indicated that it will file an affidavit to that effect.
3. The prosecution filed an affidavit sworn by the investigating officer No. 246526 P.C Sheldon Ndalo who averred inter alia; that the accused prior to this incident had an active defilement case involving a minor namely Sween Awino (now deceased) vide Bondo law courts Criminal case number E006 of 2024; that the accused was released on a bond of Kshs 100, 000/ on 11/3/2024; that the minor went missing just three days after the release of the accused on bond; that the missing minor later made a distress call whereupon the police went in search of her only to learn that the accused had just picked her ; the police picked up the accused who led them behind his house where the body of the missing minor was discovered; that the accused is likely to interfere with witnesses; that the members of public are still hostile and might retaliate against the accused herein; that the accused should remain in custody until the case is finalized.



4. The bond application was canvassed orally by learned counsels for the parties. Learned counsel for the prosecution reiterated the averments of the investigating officer which is to the effect that on 12/12/2023 the accused was released on a bond of Kshs 100,000/= and that after his release, the minor in the defilement case went missing three days after his release. That a report of the missing minor was made at Bondo Police Station vide OB No. 43/15/03/2024. That there were witnesses who saw him picking up the minor. That he was re-arrested and on interrogations he led police officers to his home in Nyangoma division where the dead body of the minor was retrieved from a bush behind his house. It was further submitted that the accused abducted the minor with the aim of defeating justice in the defilement case. That the accused is likely to interfere with witnesses and that the minor is the deceased in this case. Further, it was argued that releasing the accused on bond will cause public outrage and disturbance noting that the matter has attracted high public interest in that the public is very hostile against him and that members of the public even demonstrated in Bondo town because of his actions.
6. In reaction to the states opposition to bond, Counsel for the accused relied on Article 49(1)(h) of *the Constitution* and submitted that the accused is presumed innocent until proved guilty. Counsel likewise noted that all the issues stated by the prosecution on the defilement case, re-arrest of the accused and all surrounding allegations have not been backed up by any supporting documents which ought to be attached to the objection. That the same remain as such and mere allegations and prayed that the accused be released on favorable bond terms.

Analysis and Determination

7. I have given due consideration to the oral submissions of both learned counsels. Article 49(1)(h) of *the Constitution* stipulates thus: “An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” This simply connotes that granting of bail or bond is not automatic. The same may be denied where there’s compelling reasons to do so.
9. Further, the National Council for Administration of Justice (NCAJ) as established under section 34 of the *Judicial Service Act*, No. 1 of 2011, was tasked by the Honorable Chief Justice to formulate Policy Guidelines on Bail and Bond. Clause 3 of the Bail and Bond Policy Guidelines provides for the General Principles to guide judicial officers in the decision making of whether or not to grant bail/bond.
10. The aforementioned Clause 3.1(e) Provides that bail determination must balance the rights of the accused persons and the interest of justice. It goes further to extrapolate as follows: On the one hand, police officers and judicial officers should endeavor to preserve the liberty of an accused person, who is presumed to be innocent and should be allowed to keep the fabric of his or her life intact by, for example, maintaining employment and family and community ties. Preserving the liberty of an accused person permits him or her to take an active part in the planning of his or her defense. On the other hand, the State has a duty to prosecute those who commit crimes, which may entail qualifying the individual right to liberty. The State has a duty to ensure public safety between the time of arrest and trial of accused persons, and a duty to protect the integrity of the criminal justice system.
11. This means that where there is convincing evidence that an accused person may undermine the integrity of the criminal justice system, by, for example, intimidating witnesses or interfering with the evidence, then a need arises to either deny such a person bail or bond, or set stringent bail or bond terms.
12. Equally, where there is convincing evidence that the accused person will endanger a particular individual (for example, victims of the crime) or the public at large, or even commit a serious crime, it also becomes necessary to subject an accused person to pre-trial detention.



13. The interests of justice therefore demand the protection of the investigation and prosecution process against probable hindrance by accused persons. It is therefore important for police officers and judicial officers to appreciate that the public have an interest in the effective prosecution of offences.
14. In appreciating the need to balance the rights of accused persons with the interests of justice, *the Constitution* states that an accused person can only be denied bail or bond where the court establishes that there are compelling reasons not to be released.
15. That is, while *the Constitution* stipulates that every accused person is presumptively entitled to bail or bond, it permits the denial of bail or bond where the prosecution presents convincing evidence to justify such denial.
16. Apart from Article 49(1) (e) of *the constitution*, section 123 (A) of the Criminal Procedure Code sets out the exceptions to the right to bail or bond and that the court shall have regard to all relevant circumstances inter alia; nature and seriousness of the offence; character, antecedents, associations and community ties of the accused; accused's record in respect of the fulfilment of obligations under previous grant of bail; strength of the evidence of his having committed the offence etc.
17. The reasoning behind bail or bond is based on the constitutional imperative under Article 50 (20) (a) of *the constitution* that the accused is presumed innocent until the contrary is proved. The primary consideration is always the ability of the accused to attend trial. The only exception remains where compelling reasons are demonstrated. See *R Vs Danson Mgunya & Another* [2010] eKLR. A murder suspect has a constitutional right to be released on bail/bond unless there are compelling reasons to deny the same. The compelling reasons must relate to exceptional circumstances which should be on a case by case basis. In the case of *R Vs Pascal Ochieng Lawrence* [2014] eKLR the court laid down the factors to be considered in an application for bail pending trial when it held as follows:

“It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the state. The court in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:

 - The seriousness of the offence although this carried greater weight under the old constitutional dispensation.
 - Weight of the evidence so far adduced if the case is partly heard.
 - Possibility of the accused interfering with witnesses.
 - Safety and protection of the accused once he is released on bail/bond.
 - Whether the accused will turn up for trial.
 - Whether the release of accused will jeopardize the security of the community.
18. Looking at the reasons advanced by the prosecution vide the affidavit of the investigating officer, iam satisfied that compelling reasons have been advanced to warrant a denial of bail/bond at this stage of the proceedings. It is also noted that this court has not been presented with a pre-bail report from the probation department. This court will still call for the same and that the parties will have an opportunity to react to the same and that the court will give further directions thereon. I find it is appropriate that key prosecution witnesses do present their evidence after which the defence will be at liberty to renew their quest for bail/bond pending trial.



19. In the result, the defence request for bail/bond pending trial at this stage is declined. Parties are hereby directed to set down the matter for hearing on priority basis. In the meantime, the County Probation Officer Siaya is directed to file a pre-bail/social inquiry report within the next fourteen (14) days.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 31ST DAY OF OCTOBER 2024.

D.KEMEI

JUDGE

In the presence of :

George O. Adede Accused

Ochanyo for Accused

Ms Kerubo for Prosecution

Ogendo Court Assistant

