



**Republic v Amani (Criminal Case E018 of 2024)
[2024] KEHC 13537 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E018 OF 2024**

AC BETT, J

OCTOBER 31, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

FRED OMUKHANA AMANI ACCUSED

RULING

1. The Accused 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 the 8th day of April 2024, at Ematundu village, Eshibinga Sub-location, Khwisero Sub-County within Kakamega County, he murdered his wife Electus Mango Ambunia alias Jeniffer.
2. The Accused, who was arrested on 11th April 2024 sought release on bond/bail upon entering a plea of not guilty on 16th July 2024. At the request of the Prosecution, the court called for a pre-bail report. After the pre-bail report was filed, the Accused person’s Counsel reiterated her application for the Accused to be released on bond. She submitted that the Accused is not a flight risk as he has an uncle who is ready to stand surety on his behalf. She further submitted that the Accused has suffered while in custody as no one visits nor caters for his personal effects, yet he should be presumed innocent until proven guilty. Further, she said that the community has destroyed his homestead and he need to pursue those who did the destruction, something he cannot do while in custody. She maintained that the Accused has a Constitutional right to bail under Article 50 of our *Constitution*. She also said that the Accused needs to take care of his four children, a duty he used to discharge before his arrest.
3. On the Prosecution’s side, Ms. Chala opposed the application on the basis that the pre-bail report was not favourable. She averred that the Accused does not have a fixed abode and is therefore a flight risk. She also stated that there are concerns that the security of the Accused is at risk. She further averred that there are indications that the Accused may interfere with the witnesses who are his children and



therefore vulnerable. On this basis, she urged the Court to deny the Accused bail and have the case expedited.

4. In rejoinder, Counsel for the Accused said that the grounds advanced by the Prosecution are insufficient because the intended surety who is the Accused person's maternal Uncle hails from a different place from the Accused's home. She also said that the Court can make an order to forbid the Accused from coming into contact with the children.
5. The right of an Accused person to be released on bail is provided under Article 49(1) (h) of the Constitution which states that:-

“ 49 An arrested person has the right-
(1) (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.”

6. Based on the Constitutional provisions, although the right to bail is not absolute, only compelling circumstances can persuade the court to deny an accused person bail or bond. In the case of Republic v William Mwangi Wa Mwangi [2014] eKLR Muriithi, J held that:

“It is now settled that in the event that the State is opposed to the grant of bail to an Accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail. It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the Accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”

7. The Constitution does not define what would constitute “compelling reasons”. However, in the case of Republic v Joseph Mueke Mutunga alias Moses Mutunga [2020] eKLR, Odunga J, as he then was, had this to say:-

“ 27. The Constitution however has not identified what qualifies under the term "compelling reasons.? The ordinary meaning according to Thesaurus English Dictionary of the word "compelling' is forceful, convincing, persuasive, undeniable and gripping. From this plain meaning it is apparent that the court would consider any fact or circumstances brought to its attention by the prosecution which would convince the court that the release of the accused would not augur well for the administration of justice or for the trial at hand. The court would therefore in my view consider the circumstances of each case using commonly known criteria, primary of which is whether or not the accused will attend trial.”

8. In determining whether to grant bond therefore, the Courts have held that compelling reasons would include considerations such as whether the accused is likely to attend Court, whether the accused is likely to interfere with the witnesses, and whether the security of the accused is assured.
9. Although the gravity of the offence is not a determining factor when the court is deciding whether to release an accused person on bail, it has been held that it is a contributing factor that is most likely



to influence the accused to abscond court. In Criminal Application No 319 of 2002 *Priscilla Jemutai Kolonge v Republic*(unreported) at page 3, Mbogholi Msagha J held as follows:-

“ However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.”

10. The Accused herein had his entire homestead demolished by the community in observance of a cultural norm where a perpetrator of a serious offence must be punished in such a manner. This was reported by the Probation Officer who conducted the social inquiry for purposes of the Pre-bail report. The incident was confirmed by the Accused’s Counsel. As at now, the Accused stands ostracised. He is a pariah to the community. From the Pre-bail report, his relatives are planning to dispose of his share of land then resettle him elsewhere. Before the resettlement, he is homeless, with no fixed abode.
11. The Accused through his Counsel said that a maternal Uncle is willing to stand surety for him. The said Uncle did not swear any Affidavit to support this averment nor to say that he is able and willing to accommodate the Accused pending the hearing and determination of this case. Furthermore, the court has no material to assist it to establish whether the Uncle is qualified to stand surety. Therefore, the Court must proceed and make its determination on the basis that the Accused has no fixed abode and is likely to be a flight risk considering the gravity of the charges facing him. In the case of *Republic v Morombe Sankare Setek* [2014] eKLR, the court declined to grant bail to an Accused who was stated to be a nomadic herder notwithstanding the fact that he said that he was a resident of Trans Mara. In disallowing the application, the Court observed as follows: -

“ It is not denied that police had to trace the accused using Safaricom’s enlistment. Further, although Accused is said to have a home within Trans-Mara, it is quite telling that no specific place i.e. village, centre or school is mentioned with regard to where exactly his home is situated. If he is a herder, then the other issue of concern is whether his profession inclines him to nomadic tendencies when in search of pasture and water? Certainly, such a scenario would make it very difficult to trace the Accused.”

12. In the same breath, this Court finds that it would be difficult to trace the Accused in the event he absconds court because he is no longer accepted in his known area of residence.
13. The Prosecution also argued that the Accused is likely to interfere with the witnesses. The key witnesses are the Accused’s biological children. They are of a tender age. They are therefore considered to be vulnerable witnesses under the law. Currently, they are in an un-named Children’s home in Bungoma. It is quite likely that the Accused would look for them upon his release and being the sole surviving parent, he may influence them and interfere with their testimony. Although the Accused said that the court can make an order to forbid the Accused from seeing the children, it may not be easy to enforce such order. The Prosecution’s misgivings in regard to this are not farfetched.
14. On the issue of the Accused person’s security, the Pre-bail report is clear. The Accused is considered a killer and an outcast. Even his immediate family members are yet to visit him in Prison. The failure to visit the Accused begs some questions. To compound this, the area Assistant Chief said that there is still some unresolved tension in the community after the offence.
15. Despite the argument that the Accused will attend court and will not interfere with the witnesses, the Court is persuaded that there exist sufficient grounds for the court to believe that the Accused can be



considered a flight risk and one who is most likely to interfere with the witnesses. The Court is also persuaded that the Accused may be at risk if released on bond due to the cultural practices that demand that he be removed from the community. The said grounds constitute compelling reasons to deny the Accused person bond.

16. For the foregoing reasons, I find that the application for bond must fail. The Accused shall remain in custody until he can demonstrate that his circumstances have changed but in any event, after the minor witnesses have given their evidence.

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

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for Prosecution

Ms. Isokoni for Accused

Court Assistant: Polycap

