



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gitau (Criminal Case E036 of 2023)
[2024] KEHC 14563 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E036 OF 2023
DO CHEPKWONY, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE NDUATI GITAU ACCUSED

RULING

1. The Accused person, George Nduati Gitau is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that:-

“On the 6th September, 2023 at Mumbuini Village of Gatundu South Sub-County within Kiambu County, the accused murdered one Peter Mwangi Njeri”

2. The Accused person pleaded ‘Not Guilty’ to the offence of Murder. Thereafter, Ms. Kamau Counsel for the Accused person urged the court to grant the accused favourable bail/bond terms. According to Counsel the accused is not a flight risk and has a fixed abode with two children who are in dire need of their father’s care and protection. She further urged that the accused is genuinely employed. The Counsel further stated that despite the gravity of the offence, the love and ties for his children outweigh his desire to abscond court.
3. In response, the Prosecution sought to file a comprehensive affidavit in opposing the application for bail. However on 12th December, 2023 the prosecution indicated to court that it did not have any compelling reasons why the accused should be denied bail.
4. The recommendation was that the accused can benefit from bail and bond terms after the key witnesses have testified and the court should consider the sentiments of the victim’s family.



Analysis and Determination

5. Having listened to both counsel for the accused in his oral application that he be released on bond/ bail reasonable terms, and noted the prosecution's response, I have also read through the Pre-bail information report filed on 17th November, 2023. It is trite that the right to Bail and bond is provided for under Article 49(1)(h) of the Constitution it which provides that: -

‘An accused 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.’

6. It is worth-noting that the right to be released on bond is not absolute. This is because if it is shown that there exist compelling reasons to warrant the denial of bail and bond term the accused will not benefit from this right. The Court in the case of Republic –vs- Joseph Thiongo Waweru & 17 Others [2017] eKLR defined ‘compelling reasons’ as follows:-

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

7. Section 123A of the Criminal Procedure Code, also provides for various factors which ought to be considered in bail and bond application. They include:-

- (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;
- (b) should be kept in custody for his own protection.

8. In this case, the court has considered the oral application made by the Accused person and the Pre Bail Report. I have read through the Pre-bail information report filed on 17th November, 2023 and find the same is based on an inquiry and assessment of the accused person's background, his willingness and ability to respond to bail application personal circumstances, possible interference with the trial, victim's family, witnesses and his own security. From his family members, no-one is committed to



ensuring he attends court as they are neither ready to stand as security nor deposit securities for his release.

9. It has also been reported that the accused has previously been in conflict with the law and was not able to secure release on bond. From the victim's family, they are still grieving the loss of their son, who is a nephew to accused and accused's release is likely to elicit negative emotions that could lead to further criminal acts. Further, apart from the recommendations in the Pre-bail information being unfavourable as against the accused, the court has taken note of the fact that the accused is a relative to the victim's family and find there is a likelihood that he may interfere with the witnesses who are relatives and friends and equally his personal security may be at risk at the moment. As such there is need to preserve the evidence and protect the witnesses in the matter before the court can consider releasing the accused person on bail/bond terms.
10. In the circumstances, the court finds that the Accused is not suitable to be granted bail and bond terms at the moment. The oral application by the court for the accused to be released on bond is declined for now and the accused be at liberty to apply for a reconsideration of bail and bond terms after key witnesses have testified in the matter.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 30TH DAY OF OCTOBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kamau counsel for the accused person

M/S Ndeda counsel for the State

Court Assistant - Martin

