Republic v Murunga (Criminal Case E015 of 2024)
[2024] KEHC 13102 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13102 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL CASE E015 OF 2024

J WAKIAGA, J

OCTOBER 30, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

FRED CHILUBA MURUNGA ..... ACCUSED

RULING

1. The accused pleaded not guilty to the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on the 13th day of September 2022 at Karandi village in Kinyona Location Kigumo Sub Location within Muranga jointly with others not before Court murdered Paul Njuguna Kamau.

2. In compliance with the provision of Article 49 of *the Constitution* the prosecution filed an affidavit in opposition to the accused released on bond sworn by Pc Sanga Tunje in which it was deposed that the accused was employed as a farm hand by the deceased and that on the 13th September 2022, the deceased's wife left the same in the house together with the accused only for the accused to attack the deceased with a panga, locked him in the kitchen before stealing the deceased properties including a motor cycle which have not been recovered to date.

3. It was deposed further that the accused escaped from the scene and was only arrested after a period of two years within Kiwanja area in Ruiru on the10th day of June 2024 thereby depicting the same as a flight risk with no fixed abode. It was deposed further that the accused was likely to interfere with investigations as most of the items stolen from the deceased were yet to be recovered.

4. In response to the application, the accused swore an affidavit in which he stated that there was no likelihood of interference with witnesses since he was currently residing and working in Ruiru sub-County away from where the offence occurred and that he had not interacted with any of the witnesses.

5. He stated that he was not a flight risk since he had a permanent abode at Ruiru where he was working for gain and supporting his mother and the children of his sister.

6. In compliance with the bail bond policy guidelines, the Court called for pre-bail report wherein it was stated the accused originates from Riana Location in Sunika sub County of Kisii County and that his mother was currently residing in South Mugirango as a casual labourer with no fixed abode. It was stated that the family members described the accused as hardworking and responsible young man who was supporting his mother to take care of the children of his late sister.

7. It was stated that the accused was a boda boda operator in western Kenya before coming to Muranga in the year 2020 as farm hand and a tea picker up to the time of the offence. He is married with two children one from a previous marriage. Upon his arrest, the wife went back to her home.

8. On the victim impact, it was stated that the victim was a 64-year-old retired Public Health Officer and that the offence has had a major impact on his family. The victim's wife stated that she was afraid of the accused, since he knew all their security shortcomings having worked for them and that the accused went into hiding soon after the commission of the offence and was therefore a flight risk.

Determination

9. The place, purpose and the objective of under trial detention in Kenya is an area which has not been settled. Article 50 of *the Constitution* provides for right to fair hearing and at Sub Article 2(e) a right to have the trial begin and concluded without unreasonable delay.

10. *The Constitution* is silent on the period within which the trial must be concluded and to mitigate the gap, Article 49 provides for the rights of arrested person at Sub Article (1) (h) to be released on bond or bail on reasonable conditions pending charge or trial, unless there are compelling reasons not to be released.

11. What constitute compelling reasons have been captured in the bond bail policy Guidelines as follows:

    a. That the accused person is likely to fail to attend court proceedings; or

    b. That the accused person is likely to commit, or abet the commission of, a serious offence; or

    c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or

    d. That the accused person is likely to endanger the safety of victims, individuals or the public; or

    e. That the accused person is likely to interfere with witnesses or evidence; or

    f. That the accused person is likely to endanger national security; or

    g. That it is in the public interest to detain the accused person in custody.

12. In this cause the prosecution as stated that upon the commission of the offence the accused moved out of the area and was only arrested after a period of two years. It has been stated that the accused has no fixed abode and whereas the same in response stated that he had a fixed a bode in Ruiru, the same provided no proof thereof.

13. I am therefore satisfied that the prosecution has provided adequate compelling reasons to enable the Court deny the accused the exercise of his right to bail, which I hereby do. The accused shall remain in remand custody until the conclusion of the case. And it is ordered.

DATED SIGNED AND DELIVERED AT MURANGA THIS 30th DAY OF OCTOBER 2024

J. WAKIAGA

JUDGE

In the presence of:

Mr. Ndonga for the Accused

Accused present

Jackline – Court Assistant