



**Republic v Mwangi (Criminal Case E009 of 2024)
[2024] KEHC 14511 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E009 OF 2024
DO CHEPKWONY, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MUNGAI MWANGI ACCUSED

RULING

1. The Accused person, John Mungai Mwangi 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 7th day of February, 2024 at Limuru area in Limuru Sub County within Kiambu County, the accused murdered one John Mahingo Mwaniki”

2. On 11th April, 2024, the charge was read over and full information thereof explained to the accused in Kiswahili language which he understands and he pleaded ‘Not Guilty’ to the offence of Murder. M/ S Kavutha who was holding brief for Mr. Gacharia for the State urged the court to call for a pre-bail report to be availed so that the court can consider the application for the accused to be released on bail and bond terms, and which the prosecution’s Counsel did not object to. The court called upon the Probation Officer to conduct a social inquiry on the accused person, and prepare and file a pre-bail report, which was done on 5th July, 2024.

Analysis and Determination

3. In determining whether or not to release the accused on bond/bail, I have considered the law on bail and bond, and read through the Pre-bail information on the accused filed on 5th July, 2024.



4. It is trite that the right to Bail and bond is provided for under Article 49(1)(h) of *the Constitution*, which states 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.’
5. From this provision, an accused is entitled to be released on bond on reasonable conditions unless compelling reasons are demonstrated to court to warrant the denial of bail and bond terms. 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.”
6. Section 123A of the Criminal Procedure Code, Chapter 75 of Laws of Kenya also sets out the 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.
7. In this case, the court has considered the oral application made by the Accused person and the Pre Bail Information Report. Upon reading through the said report, the court finds that in conducting the social inquiry on the accused, the Probation Officer inquired into his family’s circumstance, his personal circumstances, any use of drugs and substances, previous adherence to bond/licence terms, seriousness of the offence, victim’s concerns and sentiments the community has and views so as to come up with recommendations on this suitability to be released on bond.
8. The accused was reported to be 37 years old, a Mason and without any parental responsibilities. He is said to be from a humble background but with very supportive family. That the father is willing



and ready to stand a surety for him. It was also reported that although still hurting from the demise of their kin, the victim's family are not opposed to his release on bond as long as justice prevails. The community is also opposed to his release on bond since he does not have a criminal background.

9. In the circumstances, the accused, John Mungai Mwangi's application to be released on bond/bail is allowed on the following terms:-
- a. The accused may be released on his own bond of Kshs.500,000.00 with one surety of a similar amount.
 - b. In the alternative, the accused may be released on cash bail of Kshs.300,000.00.
 - c. The accused to provide particulars of a contact person.
 - d. The accused to attend court as and whenever he is required until the full determination of this case.
 - e. Failure to comply with order No.(d) will render the bond terms cancelled and accused remanded in custody during the pendency of the trial.

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 Ndeda counsel for the State/Respondent

Mr. Mwangi counsel for accused – Absent

Accused – Present

Court Assistant – Martin

