



Republic v Oduor alias Guka & 2 others (Criminal Case E007 & E020 of 2024 (Consolidated)) [2024] KEHC 13037 (KLR) (Crim) (29 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E007 & E020 OF 2024 (CONSOLIDATED)
K KIMONDO, J
OCTOBER 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KENNEDY OMONDI ODUOR ALIAS GUKA 1ST ACCUSED

CLINTON NJOROGE KIHUMBA ALIAS DIDA 2ND ACCUSED

SOLOMON MAINA KAMAU ALIAS SOLO 3RD ACCUSED

RULING

1. All the three accused pray for bail pending trial. The applications are fervently opposed by the Director of Public Prosecutions (hereafter the DPP).
2. Learned counsel for the 1st accused, Ms. Githanda, submitted that bail is a constitutional right under Article 49 (1) (h); and, that the accused is still deemed innocent. Furthermore, the accused is a young man raised under a difficult economic and social environment in Korogocho slums. However, his mother and sister are willing to stand surety for him. Counsel also submitted that the accused is not a flight-risk and should be admitted to bail on reasonable terms.
3. Learned counsel for the 2nd accused, Mr. Muniyiri, relied on the deposition sworn by the 2nd accused on 8th June 2024. Counsel contended that the affidavit sworn by the investigating officer opposing bail does not disclose any compelling reasons. There was also no basis for the assertion that the 2nd accused will interfere with witnesses, but in any case, he is willing to relocate to Murang'a County during the duration of the trial.
4. Learned counsel for the 3rd accused, Mr. Asitiba, relied on the Judiciary's Bail and Bond Guidelines as well as Article 49 (1) (h) of *the Constitution* and section 123A of the Criminal Procedure Code. Taking



- into account the economic means of the accused's family, he prayed for cash bond with one contact person.
5. He added that all the accused are young men who were eking out a living through casual employment in the informal settlement. In his view, it is the duty of the state to secure witnesses and it is speculative to assert that the accused are flight-risks. He also took issue with the broad and "unsubstantiated" conclusions in the three pre-bail reports.
 6. The DPP relied on the affidavit sworn by PC Benjamin Keter on 15th January 2024. The primary objection is that on 8th December 2023, "the accused attacked the premises of Komb Green Solutions where they allegedly vandalized, stole and attacked the deceased and one prosecution witness...leaving the survivor with extensive injuries".
 7. It is also deposed that on the same date, they tried to attack other witnesses at the youth group office. The attackers then went fled the scene and went underground. He avers that granted the circumstances, the witnesses and the victim's family remain apprehensive of their safety or the likelihood of interference with evidence.
 8. I should add that the Court called for pre-bail reports for each of the accused and which were all filed on 26th June 2024 under the hand of Ms. Mary Abima, Probation Officer. The probation officer does not recommend bail for any of them.
 9. I take the following view of the matter. The accused face the grave charge of murder. The DPP informs the High Court that on the 8th December 2023 at Korogocho area, Starehe Sub-County within Nairobi County jointly with others not before the court, murdered Hesbon Mbogo Njeru.
 10. Those remain allegations; and the accused are presumed innocent. Under Article 49 (1) (h) of *the Constitution*, they are entitled to bail unless there be compelling circumstances.
 11. The overarching objective of bail is to ensure that the accused attends trial. See *Muraguri v Republic* [1989] KLR 181; *Michael Juma Oyamo & another v Republic*, Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR; *Muraguri v Republic* [1989] KLR 181; *R v Fredrick Ole Leliman & 4 others*, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
 12. There seems to be a tacit concession that all the accused were living or undertaking odd jobs within Korogocho slums. For instance, the 2nd accused in his replying affidavit sworn on 8th June 2024, states that he has lived in Korogocho all his life. It would thus be unjust to say that merely because they were residing in rental premises or working in the informal settlement, they had no fixed abode.
 13. The first key question then is whether they are flight-risks. The prosecution's case is that the alleged offence occurred on 8th December 2023 and that the accused and their accomplices went underground. According to the affidavit of the investigating officer, the 1st accused was arrested on 11th December 2023, the 2nd accused on 27th December 2023 while the 3rd accused was apprehended on 13th February 2024. Granted those circumstances, I cannot say with full confidence that the accused will not abscond.
 14. Secondly, I am satisfied from the averments highlighted in paragraphs 6 and 7 of this ruling that the safety of prosecution witnesses would be jeopardized by the release of any of the accused. I thus disagree with the learned counsel for the accused that the affidavit is mere conjecture.
 15. Thirdly, I have taken into account the circumstances of the victim's family. The Victims Protection Act now requires that the views of the victim's family be considered at this stage. They are still bitter with the sudden loss of their loved one and "live in fear and uncertainty". Those fears and concerns are



captured at length in the respective pre-bail reports. I thus find that the safety of the victim's family would be put at great risk by grant of bail to any of the accused persons.

16. Fourthly, and in the unique circumstances of this case, I readily find that that the likelihood of interference with evidence by the accused is not far-fetched. That risk would not be cured by any order for relocation of the accused.
17. In the upshot, there are compelling reasons for denial of bail and the same is hereby refused. In the interests of justice, this trial shall be fast-tracked.
18. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF OCTOBER 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-
Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Githanda for the 1st accused.

Mr. Munyiri for the 2nd accused.

Mr. Asitiba for the 3rd accused.

Mr. E. Ombuna, Court Assistant.

