



**Republic v Mburu (Criminal Case E003 of 2024)  
[2024] KEHC 13027 (KLR) (Crim) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13027 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E003 OF 2024  
LN MUTENDE, J  
OCTOBER 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**RONNIE MBURU ..... ACCUSED**

**RULING**

1. Ronnie Mburu, the accused, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code following allegations of having murdered Stephen Mboya Maithya (Deceased) on 9<sup>th</sup> December, 2023 at Dandora Phase IV.
2. Having denied the information presented by the Director of Public Prosecutions, the accused seeks to be released on bond/bail pending trial.
3. The application is opposed by the State/Prosecutor. Through an affidavit deposed by No. 91918 P. C. Collins Shivatse, the Investigating Officer, who deposes that: key Prosecution Witnesses herein are family and close friends to the accused hence the apprehension that if released he is likely to interfere with them; and, that the charges are serious, attracting a maximum penalty of death which is an incentive for the suspect to flee.
4. In response thereto, learned defence counsel, Mr. Brian Arwasa Mogaka through a replying affidavit deposed that at the time of his arrest the accused was a minor aged 17 years and a student at Muchiri Secondary School. He dismissed the allegation that the accused is likely to interfere with witnesses as his family, mother and siblings have made regular visits at the prison where he is held.
5. That having been a child offender at the time, Article 53 (2) stipulated that his best interest is paramount. Being denied bail would infringe on the accused right to education and future life.



6. That the accused depends solely on his mother, Scholastica Njeri Muturi and siblings, who are prosecution witnesses, hence will not abscond court.
7. Parties' submissions were based on the information contained in the affidavit in support and opposition to grant of bail which I have taken into consideration.
8. The accused person's suitability for bond/bail was inquired into by the Probation and After Care Service. It was established that the accused was born on 10/2/2006 hence when the offence occurred, he was 17 years old and a student at Muhuri Muchiri Secondary School.
9. The victims views were given by the father of the primary victim on behalf of the entire family. They strongly oppose grant of bail to the accused. They are apprehensive that the accused is a flight risk who can easily interfere with witnesses who are mostly members of his family.
10. The community in Dandora where both the accused and victim resided indicated that the family of the accused are law abiding and they are the ones who took the accused to the Police Station to report the matter and they did cooperate with the investigators. They did not oppose the accused release on bail as he does not have a negative report but advised that he can reside away from their home as they could not guarantee his safety as some of the victim friends live within. The family of the accused supporting his release on bail being aware of security concerns have made arrangements for an alternative abode for him at Juja.
11. It was therefore, the recommendation of the Probation Officer that the accused could be granted bail on conditions that he does not set foot in Dandora so that he goes back to School.
12. The right of an indicted person to be released on bail/bond is grounded on Article 49(1)(h) of *the Constitution* which enacts that:
  - (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.
13. The accused person is presumed innocent until the contrary is proved (See Article 50(2) of *the Constitution*) this is why pretrial detention is frowned at.
14. Bail in the instant case is vehemently opposed on four (4) grounds. The seriousness of the offence which may be an incentive to abscond; the accused being a flight risk; the likelihood of interfering with witnesses; and, the need to protect the accused as an individual.
15. The question to be grappled with is whether these amount to compelling reasons in the instant case requiring denial of bail. What constitutes compelling reasons, though not defined by *the Constitution*, was considered in Republic Vs. Joktan Mayende & 4 others (2012) eKLR where it was stated that:

“...The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”.
16. At the outset, when the accused was arraigned, it was appreciated that he was still a minor, a child in conflict with the law whereby denying him bail would not have been in his best interest.
17. Section 223(1) of the *Children Act* provides that:

Institutionalization and detention of children in conflict with the law pending trial shall be used as a means of last resort, and detention pending trial shall, as far as is reasonably



practicable, be replaced by alternative measures, such as placement with a family or in an educational setting or home.

18. Murder is a serious offence. The punishment to be imposed in event of a conviction is facing up to death penalty. Indeed this could motivate the person prosecuted to escape. However, measures can be put in place to discourage/prevent the accused from fleeing and in the result refusing to turn up for trial. This would also address the question of being a flight risk that has not been demonstrated.
19. It is urged that the witnesses are the accused family members and friends that may be prevented from giving evidence following influence by the accused. An accused person may be denied liberty during trial if it is established that there is a likelihood of interfering with witnesses. The Bail and Bond Policy Guidelines provide for a scenario where the accused has been provided with Statements hence knows identities of the witnesses and the nature of the evidence they will adduce which may call for denial of bail.
20. The affidavit sworn by the Investigating Officer asserts the possibility of interference with witnesses, but, it does not state what the accused may have done that would suggest the possibility of the same happening. The Witnesses who are stated to be the mother and elder brother of the accused have been visiting him at the Kamiti Youth Correctional Training Centre. It has not been alleged that the accused has acted in a manner that would influence them to become hostile by becoming unfavorable witnesses to the State.
21. On the question of friends who are not pointed out being influenced by the accused, it is a matter of assessing the importance the interest of the accused who ought to continue with his education as against incarcerating him and hence deny him the basic right to learning.
22. On the question of the safety of the accused, Section 123 A of the Criminal Procedure Code provides:
  - (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 fulfillment 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. ( Emphasis added)
23. It is not in dispute that there may be need to protect the accused by not allowing him to go back to where he resided in Dandora as he may be harmed. In the interest of justice and his age, his parent/ family has proposed to ensure his safety to enable him continue with education.



24. In the result, I find the State having not put forth convincing reasons that would require denial of bail in the instant case. In the result, I make orders thus:
- (a) The accused be and is hereby granted bond of Kenya Shillings Three hundred thousand (Ksh. 300,000/-) with a surety in a like sum.
  - (b) Upon release he will be barred from returning to Dandora his previous place of residence.
  - (c) He shall not contact his friends either directly or through proxy.
  - c. In event that he disobeys the conditions set, the bond will be cancelled.
25. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 28<sup>TH</sup> DAY OF OCTOBER, 2024.**

**L. N. MUTENDE**

**JUDGE**

