



**Republic v Kathure (Criminal Case E006 of 2024)
[2024] KEHC 15012 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E006 OF 2024
FN MUCHEMI, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

POLLY KAGENDO KATHURE ACCUSED

RULING

1. The accused person was charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 8th day of March 2024 at Thika Municipality, Thika West sub-county within Kiambu county murdered Stephen Muuo Oluoch. On 31st October 2024, the accused person entered a plea of not guilty.
2. The prosecution then filed an Affidavit of Compelling Reasons which they have labelled an Affidavit in Opposition to Bond dated 31st October 2024 sworn by CPL James Kiogora who is the investigating officer in the instant matter. He deposes that the accused person’s permanent place of abode is not known and further that the murder incident occurred at the house where the accused person was employed as a house help and was living there.
3. The investigating officer further states that if the accused person is released, she may go to an unknown destination as her previous employer will not take her back and therefore they will not be able to know her whereabouts. Furthermore, the investigating officer states that he does not know the accused person’s family background or rural home and may not be able to trace her if she absconds. Thus, the investigating officer is apprehensive that if the accused person is released on bail/bond, she is likely to abscond.
4. The investigating officer avers that the accused person may also commit other similar offences while on bond as she may go and seek employment as a house help elsewhere to other unsuspecting households and may commit atrocities as the one she is charged with. The deponent thus urges the court to find



that there are compelling reasons as to why the accused person should not be released on bail or bond and exercise its discretion and not grant the accused person bond.

5. The accused person did not file a Replying Affidavit in opposition to the Affidavit in opposition of Bond.
6. Parties put in written submissions.

The Prosecution's Submissions

7. The prosecution relies on Article 49(1)(h) of *the Constitution*, Section 123A of the Criminal Procedure Code, the Bail and Bond Policy Guidelines and the case of Michael Juma Oyamo & Another vs Republic [2019] eKLR and submits that the prosecution has presented compelling reasons to warrant the denial of bail or bond to the accused. The prosecution submits that the accused person is a flight risk as she does not have a fixed place of abode. Furthermore, the accused person's permanent place of abode is not known. The prosecution submits that the murder incident occurred at the house where the accused person was employed as a house help and was living there. The prosecution is apprehensive that if the accused person is released she may go to an unknown destination as her previous employer will not take her back hence her whereabouts will be unknown. Furthermore, her family background or rural home is also not known and hence she will not be able to be traced if she absconds.
8. The prosecution reiterates the contents of their affidavit in regard to the accused committing similar offences if released on bond.

The Accused's Submissions

9. The accused person relies on Article 49(1)(h) of *the Constitution*, Section 123(A) of the Criminal Procedure Code and the case of Republic vs Danson Mgunya & Another [2010] eKLR and submits that the primary consideration in a bail/bond application must always be the ability of the accused to attend trial save where the prosecution demonstrates compelling reasons. The accused person further relies on the cases of Republic vs Joktan Mayende & 3 Others [2012] eKLR, Mohammed Abdurraham Said & Another vs Republic [2012] eKLR, Wilson Thirimba vs DPP [2012] eKLR, Republic vs Pascal Ochieng Lawrence [2014] eKLR and Republic vs Joshua Mueke Mutunga & 3 Others [2020] eKLR and submits that in exercising its discretion on granting bail/bond, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. The accused person argues that the fact that she lived where she was working does not necessarily mean that she does not have a permanent abode because the nature of her work required that she lives in the house of her employer. The accused person submits that she hails from Kirindini in Tigania West, Meru and that her home is a few metres from Kirindini Law Courts and about 1 km from the Kirindini Chief's camp. Furthermore, the accused person submits that her permanent abode is less than 2 kms from Nchiru Police station and that she lives with her parents when she is not at work as she is unmarried.
10. The accused person submits that she has a medical condition that would be best treated and monitored while she is living with her family during the trial. Thus, the accused person submits that she cannot be said to be a flight risk and furthermore, the prosecution has not in any way adduced evidence before the court to support its allegation. The accused person submits that she has never been charged with any crime before as she is a law abiding citizen and would not in any way abscond or fail to attend court.
11. The accused person submits that the mere fact that the offence she is charged with carries a serious sentence is not a reason to deny her bail/bond. The accused person urges the court to exercise its



discretion and grant her bail/bond with favourable terms as she is willing to abide with all the conditions that will be set with support from her family.

The Law

Whether the reasons for opposing bail are merited in terms of Article 49(1)(h) of *the Constitution*.

12. Article 49(1)(h) of *the Constitution* 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.

13. It follows that the right to bail is not absolute and where there are compelling reasons, that right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.

14. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 which sets out judicial policy on bail thus:-

“the following procedures should apply to the bail hearing:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-
- b. That the accused person is likely to fail to attend court proceedings; or
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- f. That the accused person is likely to interfere with witnesses or evidence; or
- g. That the accused person is likely to endanger national security; or
- h. That it is in the public interest to detain the accused person in custody.”

15. In *Republic vs Fredrick Ole Leliman & 4 Others* [2016]eKLR the court held that:-

“The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of *Ng'ang'a vs Republic* 1985 KLR 451 where Chesoni J, as he then was thus:-

“The court in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (Cap 75), should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:-



- a. The accused will fail to turn up at his trial or to surrender to custody;
- b. The accused may commit further offences; or
- c. He or she will obstruct the course of justice

The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- a. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
- b. The strength of the prosecution case;
- c. The character and antecedents of the accused;
- d. The likelihood of the accused interfering with prosecution witnesses.”

16. The issue that arises is whether the reasons adduced by the prosecution are compelling reasons such that the court should not grant bail pending trial.
17. The prosecution has argued that the accused person is a flight risk as she does not have a fixed place of abode and that she may commit other similar offences while on bail/bond.
18. In regard to the allegation that the accused person is a flight risk, the prosecution did not demonstrate by way of affidavits or other evidence that such a thing was likely to happen. The accused person filed her submissions stating that she hails from Kirindini in Tigania West, Meru and that her home is a few metres from Kirindini Law Courts and about 1 km from the Kirindini Chief’s camp. Furthermore, her place of permanent abode is less than 2 kms from Nchiru Police station and she further stated that she lives with her parents when she is not at work as she is unmarried. In the case of *R vs Joktan Mayende & 3 Others (2012) eKLR*, the court in considering the scope of Article 49(1)(h) stated as follows:-

The phrase “compelling reasons” denote that the reasons are forceful and convincing as to make the court feel strongly that the accused should not be released on bond. Bail should therefore not be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.

19. The prosecution in my view, has failed to present any cogent evidence to support the allegations in the affidavit of compelling reasons. Having carefully considered the grounds relied on, it is my view that the reasons given do not pass the test set out under Article 49(1)(h) of *the Constitution*.
20. I find no merit in the affidavit of compelling reasons. Consequently, I hereby order that the accused person be and is hereby admitted to bail in the following terms:-
 - a. That the applicant be released on bond of KSh.2,000,000 with one surety of a like amount.
 - b. That the applicant shall not leave the jurisdiction of this court without its permission.
21. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 28TH DAY OF NOVEMBER 2024.

F. MUCHEMI



JUDGE

