



**Republic v Manguti (Criminal Case E001 of 2024)
[2024] KEHC 15015 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E001 OF 2024
FN MUCHEMI, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

VICTOR MALITI MANGUTI ACCUSED

RULING

Brief Facts

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 7th day of January 2024 at Magogoni Area in Thika East sub-county within Kiambu county murdered Josephat Maliti Manguti. On 31st October 2024, the accused person entered a plea of not guilty.
2. The prosecution filed an Affidavit of Compelling Reasons which they have labelled an Affidavit in Opposition to Bond dated 31st October 2024 sworn by PC Samuel Ndung'u who is the investigating officer. He deposes that the accused person was arrested on 7th January 2024 for being suspected to have murdered one Josephat Maliti Manguti, his father at their home within Magogoni area in Thika East sub-county. The investigating officer states that the accused person is related to most of the witnesses and if released he might threaten or interfere with the witnesses. Furthermore, the accused person has been deemed as an outcast in the community and thus the prosecution fears that if he is released, he might be attacked by the villagers.
3. The investigating officer avers that he does not know the family background or rural home of the accused and hence he may not be able to trace the accused person if he is released on bail/bond. Further the investigating officer states that the accused person is likely to abscond as his residence is not known and he is not wanted by the community at his parents' home.



4. The investigating officer states that the accused person is likely to commit a similar offence to one of his family members and members of the public since before being admitted at Mathare mental hospital he had sworn to do harm to one of his family members or the public. 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. In opposition to the Affidavit in opposition of Bond, the accused person filed a Replying Affidavit dated 15th November 2024 and states that prior to his arrest, he was in his fourth and final year pursuing a Bachelor of Computer Science and Technology at Dedan Kimathi University in Nyeri. The accused person further states that during his studies, he was residing at a hostel near the university and during the holidays he would go home where he lived with his parents and siblings at Magogoni Thika. The accused person avers that since his arrest he discontinued with his studies as he was in police custody and remand. He further states that if granted bail/bond, he intends to continue with his studies and finalize with his undergraduate programme at Dedan Kimathi University while residing near the university.
6. The accused person states that he does not intend to interfere with or harm the witnesses in the case and the prosecution's claims are baseless, speculative and unsubstantiated as they are not backed by any evidence. The accused person further states that there is no report or document that has been tendered to show that he is a danger to himself or the public. Furthermore, the accused person avers that he has been certified by Mathari National Teaching and Referral Hospital as being capable of making his defence.
7. The accused person states that he is not a flight risk as the prosecution has not produced any document to show that he is capable of absconding bail. The accused person further states that he has not been previously convicted of any criminal offence and he has a constitutional right to be presumed innocent until proven guilty. Thus, the averments made by the prosecution are made in bad faith, are unconstitutional and unmerited. The accused person avers that the investigating officer has not presented compelling reasons and substantive evidence thereto to oppose bond.
8. Parties put in written submissions.

The Prosecution's Submissions

9. 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 v 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 has been charged with the murder of his father, Joseph Maliti Manguti, which incident occurred at their home in the presence of their mother and his two sisters. The prosecution submits that the accused is likely to interfere with the said key witnesses who are his relatives and closely known to the accused. Thus the prosecution is apprehensive that if the accused is granted bail/bond, he shall go back home where his family lives and will interfere with them and therefore they will be unable to freely give their testimony on what led to the culmination of the case.
10. The prosecution submits that the accused person may also commit other similar offences while on bond as he swore to do harm to one of his family members or the public.
11. The prosecution further relies on Section 123(2)(b) of the *Criminal Procedure Code* and paragraph 4.9 of the *Bail and Bond Policy Guidelines* and submits that the accused person's life is in danger as tension and hostility is still high at Magogoni area where the incident occurred and the members of the village may retaliate if the accused person is released on bond.



The Accused Person's Submissions

12. The accused person relies on Section 123A of the *Criminal Procedure Code*, the Judiciary *Bail and Bond Policy Guidelines*, Article 49(1)(h) & 50(2)(a) of the *Constitution* and the cases of *Moffat Mungai Njoroge v Republic* (2024) KEHC 3770 (KLR) and *Republic v Robinson Musyoki Mwololo & Another* (2022) KEHC 11133 (KLR) and submits that the prosecution bears the burden of proving existence of compelling reasons to deny bail. The accused person submits that the prosecution relied on the following grounds as compelling reasons to deny him:- that he is related to most witnesses and he may threaten or interfere with the said witnesses if he is released, that he may be attacked by the community as he is deemed an outcast for murdering his father, that he may abscond as his permanent place of abode is unknown and he may commit a similar offence to his family and the public. The accused person argues that the said reasons do not meet the required threshold to be regarded as compelling reasons because they are speculative, mere averments and the prosecution failed to prove, substantiate or tender evidence to justify the reasons.
13. The accused person submits that the prosecution has not placed any evidence before the court to show that he acted in a manner that threatens the witnesses. The accused person further submits that the prosecution has not disclosed the threats by members of the village.
14. The accused person submits that he has not been previously convicted of any criminal offence and he has a constitutional right to be presumed innocent until proven guilty. The accused person further submits that prior to his arrest, he was in his fourth and final year pursuing a Bachelor of Computer Science and technology at Dedan Kimathi University in Nyeri. During his studies, the accused person submits that he was residing at a hostel near the university and during holidays, he would go home at Magogoni in Thika where he lived with his parents and siblings.
15. The accused person further submits that since his arrest, he has discontinued with his studies since has was in police custody, psychiatric care and in remand. If granted bail/bond, the accused person submits that he intends to continue with his studies and finalize his undergraduate programme at Dedan Kimathi University while residing near the university. To support his contentions, the accused person relies on the case of *Republic v Simon Obwocha Onyando* (2019) eKLR.

The Law

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

16. 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.
17. 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.
18. 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.”

19. In *Republic v 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 v 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.”

20. 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.



21. The prosecution has argued that the accused person is likely to interfere with the prosecution's crucial witness as they are members of his family namely his mother and sisters. Furthermore, the prosecution argues that the accused person is a flight risk as he does not have a fixed place of abode.
22. In regard to interference with the key witness, the prosecution did not demonstrate by way of affidavits or other evidence that such a thing was likely to happen. Further, the allegation that the accused is a flight risk is not supported by any evidence, which is yet another matter of speculation. Moreover, the accused person has sworn an affidavit stating that his place of abode is Magogoni in Thika where he lives with his parents and siblings. In the case of *R v 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.
23. 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.
24. Accordingly, I find that the affidavit of compelling reasons has no merit.
25. The accused shall be released on bond of KShs.2,000,000/= with one surety of alike amount. He shall not leave the jurisdiction of this court without its permission.
26. It is hereby so ordered.

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

**F. MUCHEMI
JUDGE**

