



**Kimunu v Republic (Criminal Case 18 of 2014)  
[2024] KEHC 14710 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 18 OF 2014  
CW GITHUA, J  
NOVEMBER 26, 2024**

**BETWEEN**

**STEPHEN MINUNGU KIMUNU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The accused, Stephen Minungu Kimunu, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 1<sup>st</sup> of July, 2014 at 10:00am, at Kanjama village, Kanjama sub-location, within Murang'a County, he murdered Charles Njagi Kieru. He denied the charges.
2. A perusal of the record shows that on 27<sup>th</sup> February 2019, his learned counsel, Mr. Mbugua, made an oral application seeking that the accused be admitted to bail or bond on reasonable conditions pending his trial. According to accused's learned counsel Mr. Mbugua, the application remained unprosecuted from February 2019 to 25<sup>th</sup> September 2024 allegedly because it was affected by the Covid-19 pandemic and thereafter, it was forgotten. These reasons are in my view most unsatisfactory considering that matter was fixed for hearing several times thereafter and three witnesses testified before Mr. Mbugua "remembered" the application.
3. Be that as it may, the application was prosecuted by way of oral submissions before me on 25<sup>th</sup> September 2024. Mr. Mbugua submitted that the accused has been in custody since 2<sup>nd</sup> July 2014 and he ought to be admitted to bail or bond pending conclusion of his trial. He averred that whereas the prosecution had opposed the application arguing that if released, the accused was likely to interfere with prosecution witnesses who were his neighbours and that he should not be released until all of them testified, the prosecution was slow in availing the witnesses in court; that they had only availed three witnesses since year 2014; that in any event, the accused's sister had agreed to accommodate the



accused in her home which was far from the locus in quo and that therefore, there was no compelling reason to deny the accused bond pending trial.

4. Ms. Muriu, learned prosecution counsel in her submissions relied on the affidavit sworn by the investigating officer Mr. William Lesika Moi on 22<sup>nd</sup> March 2024. In the affidavit, the investigating officer had mainly deposed that if released, the accused was likely to interfere with prosecution witnesses who were his neighbours. Ms. Muriu in response to Mr. Mbugua's submissions somewhat backtracked on her initial position and submitted that if the court was inclined to grant bond or bail, it should be on condition that the accused should continue taking medication to take care of his mental health and he should attend the court whenever required.
5. Having considered the application, the replying affidavit and the pre- bail report filed on 9<sup>th</sup> April 2024 which revealed that the accused had been undergoing treatment for a mental illness since year 2004, I delivered a partial ruling on 9<sup>th</sup> October 2024 in which I directed that a comprehensive medical report on the accused's current mental state and a further affidavit by the sister who had allegedly offered to accommodate the accused for the pendency of his trial be filed to guide this court in making a just determination in the application.
6. A medical report was subsequently filed on 5<sup>th</sup> November 2024 as well as a further affidavit by accused's sister one Joyce Wangui Kimunu. According to the medical report, the accused was well and stable despite not having taken medication for over one year. Joyce Wangui, on her part confirmed that the accused was her brother and that she was willing to accommodate him in her Dandora home in Nairobi and take care of him pending conclusion of his trial. She also pledged to ensure that he attended the court whenever he was required.
7. It is trite that under Article 49 (1) (h) of *the Constitution* of Kenya, an accused person has a right to be admitted to bail or bond on reasonable conditions pending a charge or trial unless there were compelling reasons not to be released. In this case, as tacitly conceded by learned prosecution counsel, the reasons that were advanced by the investigating officer in the replying affidavit no longer held true given the fact that the accused had been offered alternative accommodation in Nairobi and will not therefore need to go back to Kanjama village if released on bond.
8. It is pertinent to note that the overarching consideration that weighs heavily on the court's mind in the exercise of its discretion when deciding whether or not to admit an accused person to bond or bail pending trial is whether there was any likelihood that the accused would turn up for his trial or was likely to abscond. In this case, the accused's sister has sworn an affidavit assuring this court that she would ensure that the accused will attend court for the remainder of his trial.
9. From the material placed before me in this case, I am satisfied that the prosecution has not demonstrated that there are any compelling reasons to justify denial of exercise of the accused's person's right to bond pending conclusion of his trial. Consequently, I allow the application and admit the accused to bond as prayed on the following conditions;
  - i. The accused will be released upon executing a bond of Kshs. 500,000 together with one surety of a similar amount. His sister *Joyce Wangui Kimunu* to be approved as his surety upon depositing requisite security and giving her contact and physical address to the satisfaction of the Hon. Deputy Registrar.
  - ii. Upon his release, the accused will not go back or visit Kanjama village or contact any of the prosecution witnesses either directly or indirectly pending conclusion of his trial.
  - iii. The accused will attend this court whenever required



iv. Failure to comply with conditions ii) and iii) above will lead to cancellation of his bond.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 26<sup>TH</sup> DAY OF NOVEMBER 2024.**

**HON. C.W GITHUA**

**JUDGE**

In the Presence of:

Ms. Gakumu for the state

Mr Mbugua for the accused.

Ms. Susan Waiganjo, Court Assistant

