



**Republic v Omondi & another (Criminal Case E072 of 2024)
[2024] KEHC 16694 (KLR) (Crim) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E072 OF 2024
AM MUTETI, J
DECEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KENNEDY ONYANGO OMONDI 1ST ACCUSED

ANTONY THUKU MACHARIA 2ND ACCUSED

RULING

1. The accused persons are charged with two counts of the offence of murder.
2. The two are alleged to have jointly murdered John Oduor Otieno and Emmanuel Oduor Martin on the 4th November 2024 at St. Joseph area in Ruai Sub-county within Nairobi County.
3. The prosecution through Ms. Njoroge prosecution counsel informed this court that it had no compelling reasons to have the accused persons denied bail/ bond.
4. According to Ms. Njoroge all that the prosecution was keen on is to have the accused persons released on stringent bond terms to ensure that they would turn up for trial.
5. Ms. Njoroge also pleaded with this court not to grant cash bail to the accused persons although she did not give a specific reason why she thought a cash bail would be inappropriate.
6. The prosecution also prayed to have the accused persons deposit their passports and a warning to be issued to them to avoid contact with the prosecution witnesses once released on bail.
7. The defense on its part through Mr. Onyango Advocate and Mr. Kinyanjui advocate undertook to advise their clients not to interfere with the prosecution witnesses and further promised to have their clients abide by all the conditions that this court would impose.



8. I have considered the application by both accused persons and by dint of the provisions of Article 49 of *the Constitution* as read with Section 123 of the Criminal Procedure Code, this court is inclined to grant bail to the two accused persons.
9. Bail is a Constitutional right of the accused that can only be limited where compelling reasons are advanced by the prosecution.
10. The prosecution having conceded that there are no compelling reasons to deny bail the question that this court is left to determine is what terms would be appropriate to impose in order to ensure that the primary objective of granting bail is achieved.
11. The issue of terms is purely a matter of exercise of judicial discretion by this court and is not subject to the terms proposed by either party in the matter.
12. It is however important for the court to give due considerations to the proposals made to it through the proposals made though the proposals do not bind the court.
13. For instance, this court was not able to understand why the prosecution having conceded to the grant of bail would insist that cash bail should not be considered as an option by the court.
14. The most important thing for the court is to ensure that the terms imposed are reasonable in view of the gravity of the offence and that the terms are sufficient to ensure that the accused persons turn up for trial once released on bail. See *R vs Danson Mgunya & Another (2010) eKLR*, *R vs David Muchiri Mwangi {2018} eKLR*
15. Cash deposit by any standard would also pass for a suitable security that can secure the return of an accused person to court for trial especially where the state has not alluded to any remote chance of the accused being a flight risk.
16. The philosophy behind the retention of property by the court is that the thing so deposited be of value to act as guarantee by the accused that he would return for his trial.
17. Cash is indeed of value and so is title to property. The court simply holds on to that title to property as security and nothing more. It is no guarantee that the deposit of a title to property is more reassuring as security save for the simple reason that property may not be easily disposable and there is sentimental value attached to it.
18. It should be noted that no amount of property can stop a man who intends to take flight from doing so thus the court should simply impose terms that are reasonable in the circumstances of a given case.
19. The court has not had the benefit of hearing any evidence so far thus the only factor that this court will address its mind to is the gravity of the offence.
20. It is the considered view of this court that the two accused persons should be released on bail/bond in the following terms:
 - a. Each accused persons shall be released on a bond of Ksh. 1 million plus one surety of a similar amount and in the alternative cash bail of Kshs. 500,000.
 - b. The accused persons shall deposit their respective passports in court if any.
 - c. The accused persons, if they do not hold any passports at the moment should not be issued with any passports pending the hearing and determination of this matter.



- d. The accused persons should not contact any of the prosecution witnesses upon release on bail and any such contact will be deemed to be interference with prosecution witnesses may lead to cancellation of bail/bond.
- e. Each accused person shall provide details of his fixed abode.
- f. The two accused persons shall give to the court telephone numbers that they shall be using during the pendency of the matter and any change of contacts shall only be sanctioned by the court.
- g. Each accused person shall provide a contact person who may be reached in the event that they cannot be traced by the investigating officer and the person whose details are provided shall undertake to produce the accused whenever required by the court.
- h. The accused persons shall appear before court for mentions once every month until the matter is determined unless otherwise directed by the court.

19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Onyango for the 1st Accused

Mr. Kinyanjui for the 2nd Accused

Ms Njoroge for the State

