



**Republic v Ng’endo (Criminal Case 29 of 2023)
[2024] KEHC 16001 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 29 OF 2023
DR KAVEDZA, J
DECEMBER 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

LINCOLN ABRAHAM NG’IENDO ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 ([Cap 63](#)) Laws of Kenya. The particulars of the offence are that between 20th and 22nd October 2020 at Clay City, in Kasarani Sub-County within Nairobi County murdered Elizabeth Kiloko Nthei. The accused took plea and pleaded not guilty to the offence of murder.
2. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. In response, the state and victim’s counsel opposed bond. The averments made were that the victim is at flight risk. He had taken flight from Kenya to Tanzania and had been charged with the offence of being unlawfully present in Tanzania, he was found guilty of the said offence and served a one year sentence. He was deported back to Kenya on 3rd June 2021 by the help of Tanzania Immigration Office. They urged the court to dismiss the application for bail/bond pending the hearing and determination of the case.
4. Article 49(1) (h) of the [Constitution](#) guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.



5. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

- (1)
 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.

6. The Constitution specifically requires that under Article 49(h) that terms of bail to be attached to an accused shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons why the accused should not be released on bail.

7. The pre-bail report strongly suggests that the accused person has no permanent place of resident and that he is a flight risk and threat to the lives of the victim’s family who fear revictimization. The court finds that, based on the this unfavourable report, there is a risk he could be unreachable if he absconds.

8. Accordingly, these are compelling reasons for the denial of bail pending trial.

9. Accordingly, the accused application for bail is dismissed. The accused case will as far as possible be fast tracked since the accused will until further orders of this court be remanded in custody pending his trial.

RULING DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

