



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Oroba (Criminal Case E036 of 2022)
[2023] KEHC 478 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E036 OF 2022
RB NGETICH, J
JANUARY 31, 2023**

BETWEEN

REPUBLIC STATE

AND

JOSPHAT NYABUGA OROBA ACCUSED

RULING

1. The accused herein is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence is that on the September 26, 2022, at Juja Township in Juja Sub- County within Kiambu County, Josphat Nyabuga Oroba the accused herein murdered Arnold Otieno Ouma.
2. On October 19, 2022, the charge and its full particulars were read over and explained to the accused in the presence of his Advocate Mr. Ngeresa. He denied the charge and a plea of not guilty was entered.
3. The State Counsel Mr. Gacharia informed the court that the state is not opposed to the accused being released on reasonable bail terms but urged the court to call for a pre-bail report before setting the bail terms.
4. Pre-bail report was filed on December 2, 2022 and on January 30, 2022 when the matter came up for hearing of bond application, the defence counsel Mr. Ngeresa urged the court to release the accused on lenient bail terms. He submitted that the accused is a 4th year student at Jomo Kenyatta University of Agriculture and Technology. He further stated that the accused has missed school from November 2022 and that he has a fixed place of aboard. Ms. Ngesa counsel for the state did not oppose the application for bond.
5. The pre-bail report filed on December 2, 2022 describes the accused as a person of sound, physical and mental health with no previous criminal records. The area Chief describes the accused person as someone who gets along well with his neighbors, who has never violated the law within his area of



jurisdiction and does not pose security threat if granted bail/bond. From the report, the brother in law of the accused is willing to stand as surety and is willing to ensure the accused attends court as and when required.

6. The victim's family expressed deep anger, shock and grief; they are broken and inconsolable describing the loss as unjustified and irreparable. They understand that bail/bond is a constitutional right and are not against the accused person being granted bail.

Determination

7. The rights of an accused person to be released on reasonable bail/ bond terms are enshrined in Article 49 (h) of *the Constitution* of Kenya which provides as follows: -

“An accused person is entitled to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

8. From the foregoing, the entitlement to bail is not absolute; it is limited if exceptional circumstances are established. Section 123A of the *Criminal Procedure Code* gives the parameters for the grant of the right to bail as follows:

- a. The nature or seriousness of the offence;
 - b. The character, antecedents, associations and community ties of the accused person;
 - c. The defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - 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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own protection.

9. From the pre-bail report on record and the oral submissions by counsel for the state, there are no compelling reasons to deny the accused bail. In the pre-bail report, the accused has indicated that he will live with his sister in Syokimau.

10. In the absence of any compelling reasons, I proceed to release the accused person on bond with conditions set out below.

Final Orders: -

The accused may be released on bail of Kshs 500,000/= with one surety of a similar amount.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 31ST DAY OF JANUARY, 2023

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RACHEL NGETICH

JUDGE

In the presence of:



Martin – Court Assistant

Ms. Ngesa for State

Accused – Present

No appearance for Accused

