



REPUBLIC OF KENYA



**Republic v Gitau (Criminal Case E012 of 2022)
[2023] KEHC 690 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE E012 OF 2022
GL NZIOKA, J
JANUARY 30, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE MUGAMBI GITAU ACCUSED

RULING

1. The accused is charged with the offence of; murder contrary to section 203 as read with section 204 of the *Penal Code*, (cap 63) Laws of Kenya. The particulars of the charge are as per the charge sheet. He pleaded not guilty to the charge and now seeks for bail and bond pending the hearing.
2. The application was canvassed orally wherein the accused stated that he was subjected to mob justice after the incident herein and is currently walking on crutches and therefore he needs to be released to recuperate. Further due to the hostility of the community where the offence was committed, he shall re-locate to another place. Furthermore, he undertakes to abide by the conditions the court will give and will not interfere with the witnesses. The prosecution has no objection to the accused being released on reasonable bond terms.
3. Be that as it were, the court ordered for a pre-bail report. The initial report dated and filed on May 31, 2022 was found not to be exhaustive and a further report was ordered for. A report dated December 2, 2022, was filed. I have considered the same and I note that, the accused said to be 23 years old, married with one child aged 3 years old.
4. That his parents are ready to provide security for bond. Furthermore, the area chief and the investigation officer, Mr Gereza of DCI of Naivasha Police Station has no objections to grant of bail. However, the victim's parents are extremely emotional over the issue to the extent that the interview with the Probation officer was cut short.



5. I have considered the application in the light of arguments advanced by the respective parties. I note that article 50 (2) (a) of the Constitution stipulates that every person is presumed to be innocent unless otherwise proved and states: -

“(2) Every accused person has the right to a fair trial, which includes the right—
(a) to be presumed innocent until the contrary is proved.”

6. In the same way, section 123 of the Criminal Procedure Code empowers the court to admit an accused person to bond or bail on reasonable terms and states as follows: -

“

“(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced”.

7. Pursuant to the aforesaid, section 123A provides that: -

“(1) Subject to article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

- (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 fulfilment 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”.



8. In that regard, article 49 (1) (h) of the Constitution states that: -

“An arrested 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”.

9. Finally, paragraph 4.9 of the Kenya Bail and Bond Policy Judiciary Guidelines, lays out different factors to be considered by the court when deciding with whether to grant or deny bail/bond and includes: -

- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- b. The strength of the prosecution case
- c. Character and antecedents of the accused person.
- d. The failure of the accused person to observe bail or bond terms
- e. Likelihood of interfering with witnesses.
- f. The need to protect the victim or victims of the crime from the accused person.
- g. The relationship between the accused person and potential witnesses.
- h. Child offenders. where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor.
- i. The accused person is a flight risk.
- j. Whether accused person is gainfully employed.
- k. Public order, peace or security. whether the release of an accused person will disturb public order or undermine public peace or security.
- l. Protection of the accused person. whether pre-trial detention is necessary to protect the accused person.

10. To revert back to this matter and taking into account all the factors stated herein I find that there is no compelling reasons advanced to deny the accused bail or bond pending trial. The only factor to be taken into account is to ensure that he turns up for trial so that the victim’s family can have an opportunity to be heard and the matter be determined on merit.

11. In that regard to balance the interest of all the parties it is necessary to impose terms that will meet the interest of justice, I accordingly order as follows: -

- a. The accused will be released on bond of ksh 800,000 with one surety of like amount.
- b. No cash bail terms are granted at this stage, especially before the trial commences.
- c. He shall provide one contact person who shall liaise with the court and the investigation officer at an interval of three months to confirm the accused’s availability to attend court. The contact person shall preferably be a person employed in the public sector or a civil servant.
- d. The accused shall not interfere with the witnesses in any way before and after the hearing of the case.



- e. He shall relocate from the area where the offence was committed or where the witnesses or victim's family reside until the case is heard and determined.

12. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 30TH DAY OF JANUARY, 2023

GRACE L NZIOKA

JUDGE

In the presence of;

Applicant present on call virtually

Mr Ndiema for the respondent

Mr Wairegi for the accused

Ms Ogutu Court assistant

