



**Prosecutor v Mugure (Criminal Case E088 of 2021)
[2023] KEHC 156 (KLR) (Crim) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E088 OF 2021
DO OGEMBO, J
JANUARY 23, 2023**

BETWEEN

PROSECUTOR REPUBLIC

AND

JACOB GICHARU MUGURE ACCUSED

RULING

1. By an application dated 1.11.2022, the applicant Jacob Gicharu Mugure, has pleaded that he be admitted to bail pending the determination of this case. The application is supported by his own affidavit, of even date in the said affidavit the applicant depones that he is a boda boda operator and that his admission to bail shall not interfere with the investigations. He denies being a flight risk nor that he will interfere with the prosecution witnesses. Maintaining that bail is a constitutional right, the applicant submitted that he remained innocent until the contrary is proved. He has undertaken to appear in court and to abide by any conditions that the court may set on his release on bail.
2. These are basically the submissions of learned counsel Ms. Martina in court on 7.12.2022. Counsel otherwise added that the applicant has secured an alternative place of abode, his brothers' residence in Zimmerman. Counsel relied on the cases of Richard Alden(2016)eKLR, *Panja versus Republic* (1972)EA, *Oscar Edwin Versus Republic* (2021)eKLR, Danton Mayende case and lastly the Moseiba Mohamed case. Basically, the submissions were that the prime consideration for grant of bail is whether the accused shall attend court and that the objections to bail must be substantiated by the prosecution.
3. Ms. Kimani, counsel for the state, opposed the application. First, on the ground that if released, the applicant is likely to interfere with the witnesses. That accused was the deceased's step father living in the same house, and the witnesses are his wife and neighbours well known to him. Secondly, that the applicant is a flight risk. That he has no know source of employment or place of abode or any



community ties. And lastly, that for his own safety and security, the applicant should remain remanded in custody as the residents are likely to attack him in revenge.

4. I have considered this application and the submissions made to it by both the defence and the prosecution sides. I have also carefully considered the authorities cited by the applicant to support of the application. Article 49(1)(h), guarantees the right to bail to all persons accused, irrespective of the nature of the charges they face before the court. The constitutional provision on the right to bail, however, puts a caveat to the same right. That should there be shown the existence of a compelling reason, then the accused may be denied the right to bail pending trial.
5. There is no disagreement between the parties as to what constitutes compelling reasons. The Bail Bond policy Guidelines (paragraph 4.9), gives directions on this and lists the following as being the issues the court may consider in the grant or refusal to grant bail, amongst others:-
 - i. Likelihood of interference with the witnesses or investigations.
 - ii. Whether the accused is a flight risk.
 - iii. Nature of the charge.
 - iv. Strength of the prosecutions case.
 - v. Whether the applicant has a place of abode.
 - vi. Character and antedecents of the accused.
 - vii. Whether he has jumped bail in previous cases.
 - viii. Public security, law and order.
 - ix. Accused's own security.
6. It is important to note that it is upon the prosecution to prove the existence of any of the compelling reasons if bail is to be denied. This was the finding of the Hon. Justice Lesiit in the case of *Republic Versus Richard David Alden* (2016)eKLR, cited by the defence. That the prosecution must place before the court some facts otherwise it is asking the court to speculate.
7. It is worth noting that the primary consideration for grant of bail is whether the accused will attend court and face his accusers (see *Republic Versus Godfrey Madegwa & 6 others* (2016)eKLR.)
8. In our present case, the prosecution has opposed bail basically on the following grounds:-That accused is likely to interfere with the witnesses. That accused is a flight risk as he has no place of abode or community ties. That for his own safety and security accused ought to be remanded in custody.
9. With respect, the submissions of the prosecution did not disclose any proof of the grounds raised in objecting to the application. No attempt was made to prove that the applicant has interfered with or attempted to interfere with the witnesses, nor that he shall abscond if released on bail. And as for the ground of his own safety and security, again no evidence was shown to court to persuade the court that indeed there is still hostility against the applicant which could expose him to any dangers if he is released on bail.
10. I am in the circumstances not convinced that the prosecution has proved the existence of any compelling reason good enough as to justify a denial of bail to the accused. I dismiss the objections and order that the applicant/accused may be released on bond on the following terms:-
 - i. A bond of Kshs.1 million with 1 surety of a similar amount.



- ii. In the alternative, cash bail of Kshs. 200,000/=
- iii. If released, the applicant is ordered never to contact or interfere with any of the prosecution witnesses, directly or by proxy till this case is determined.
- iv. On accused's own undertaking, upon his release on bond, the accused/applicant shall not stay or reside at Murandi Estate, Kasarani, as confirmed by the defence counsel, the applicant, upon his release, is to stay at Zimmerman, with his brother Simon Wachira of ID No. xxxx.
- v. Upon release, the accused/applicant is ordered to attend court at all times as would be ordered by the court till this case is determined.

It is so ordered.

HON. D. O. OGEMBO

JUDGE

23RD JANUARY, 2023.

Court:

Ruling read out in open court in the presence of the accused, Ms. Martina for the accused and Ms. Njoroge/Kigira for the state

HON. D. O. OGEMBO

JUDGE

23RD JANUARY 2023.

Ms. Njoroge:

This is for hearing today. We pray to proceed on 25.1.2023.

Ms. Martina:

That is not okay. We ask for further date.

Court:

Case to proceed on a new date. Hearing 23.3.2023.

