



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Yegon (Criminal Case 5 of 2020)  
[2023] KEHC 1303 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1303 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE 5 OF 2020  
F GIKONYO, J  
FEBRUARY 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SHADRACK MIKEL YEGON ..... ACCUSED**

**RULING**

**Bond/Bail Application**

1. The accused/applicant herein is facing a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. On March 23, 2022, the accused through his defense counsel Mr Korir orally applied that the accused be released on bond.
3. The prosecution filed an affidavit to oppose bond which was sworn on June 23, 2022 by PC Paul Kabochi. The deponent stated reasons they believe constitute compelling reasons not to release the accused on bond, to wit: -
  - i. Flight risk- the accused person has no known place of abode as at the time he was arrested he was a casual labourer at the Olkiriane area and his maternal home is unknown.
  - ii. Animosity- that when the offence was committed animosity arose between the Maasai and Kipsigis communities that led to clashes that saw the Kipsigis employed in the area be chased away. His release may trigger more injury to an already healing wound.
4. The respondent filed a replying affidavit sworn on July 13, 2022 by the respondent.
5. The respondent averred that he is not a flight risk. he is a resident of Chesigei village Oleshapani sublocation in Olegenyu area within Narok county where his mother, his siblings, and himself stays.



That is his known place of abode. That Olkiriene was not his place of abode but where he was performing casual labour jobs. Therefore upon release, he will not go back there but has the option of residing at his home.

6. He further averred that the allegation of animosity arising between two communities as a result of the alleged commission of the offence is not only false but speculative. That the IO has not provided enough information on the allegation.
7. In light thereof, the applicant concluded that there are no compelling reasons to keep him in custody pending the hearing of his case.

### **Analysis And Determination**

8. Under the Constitution of Kenya, 2010, all offences are bailable. This is on the premise of right to be presumed innocent until the contrary is proved. Accordingly, under article 49 (1) (h) of the Constitution an accused person is entitled to bail pending trial unless there are compelling reasons not to release him (*R v Richard David Alden* (2016) eKLR.)
9. The prosecution bears the onus of proving compelling reasons- reasons that justify limitation of right to liberty in the context of article 24 of the Constitution.
10. The overarching objective of bail is to ensure the accused gets his liberty, but also attends his trial (*Muraguri v Republic*).
11. The prosecution cited two grounds on which they opposed bail; i) possibility of animosity between tribes; and ii) likelihood to abscond.

### **Applying The Test**

12. Has the prosecution proved compelling reasons not to release the accused on bond?

### **The Animosity Between The Tribes.**

13. I will deliberately start with this ground. The investigating officer in his affidavit stated that when the offence was committed animosity arose between the Maasai and Kipsigis communities that led to clashes that saw the Kipsigis employed in the area being chased away. He therefore concluded that the release of the accused may trigger more injury to an already healing wound.
14. The defense has termed the allegations to be mere perceptions.

### **Taking Law Into Own Hands**

15. This ground forces the court to its lamentations; that modern society should be different from the one of the yore; of ruffians or Mahocks whose talent was to use all manner of cruel and torturous methods to inflict as much pain as possible and to maim or kill anyone found in their way of what they perceived to be justice. Such was a society without law and order. And, any community within the territorial jurisdiction of the Republic of Kenya- should know this is a nation governed by the rule of law and order under the Constitution of Kenya, 2010. I wonder where a community or communities or person or group of persons derives authority to chase away another community over a matter under trial. Just as a reminder, no one is above the law or should take the law into their hands lest they should face the wrath of the law. All are bound by the Constitution which reigns. See article 2 of the Constitution which declares the supremacy of the Constitution thus: -



- (1) This Constitution is the supreme law of the republic and binds all persons and all state organs at both levels of government.
16. The accused herein is by law innocent until proven guilty.
17. At this age and time, it is disheartening and depressing that a community or group of people will haughtily express a desire to harm or chase away another community over a matter under trial. Is not such an epitome of lawlessness? Can one notice any difference between such persons and avowed criminals? Any such act to harm or kill a suspect, or initiate tribal clashes should be liable to prosecution in criminal law. I have stated before, and I will state it again, that such actions are unlawful, barbaric, and uncouth without any place in law and the 21<sup>st</sup> century. Let the law punish the accused.
18. It is my strong view that the ground that the release of the accused will trigger tribal clashes and animosity should never be encouraged to be a ground for denial of bail; lest it should inadvertently promote or condone violence, disorder, and usurping of law by individuals or group of people.
19. In any case, it is the duty of the state to ensure the safety and security of its citizens including the accused person and residents of the area in question. I, therefore, find the argument that the accused be detained for fear of animosity or tribal clashes to be without any legal or factual basis and I reject it.

### **Flight Risk.**

20. In his affidavit, PC Paul Kabochi averred that the accused person has no known place of abode as at the time he was arrested he was a casual labourer at the Olkirie area and his maternal home is unknown. The accused has confirmed he has a place of abode.
21. This argument is neither here nor there, for no evidence has been tabled before this court which gives the argument the power and grace, say, that the accused is likely to abscond. Merely that the accused was arrested at his place of work does not imply he has no place of abode. It would be a dangerous proposition to pronounce such to be a compelling reason except with cogent evidence. No evidence as I have outlined or something close to that from which an inference may be drawn that he will abscond. For these reasons, the ground is not sustainable. I reject it.

### **Conclusion And Orders**

22. In conclusion, I am of the view that the prosecution has not demonstrated there exist any compelling reasons to deny the accused bail. Nevertheless, because the accused seem to have a place of abode outside the jurisdiction of the court, I will attach such appropriate conditions to the bond. For this reason, cash bail is not a suitable option.
23. Accordingly, the accused person may be released on bond on the following terms and conditions: -
- a) The bond is of Kshs 1,000,000/= with one surety of a similar amount.
  - b) The accused to provide better particulars of his actual places of abode to the deputy registrar for authentication.
  - c) The accused is warned not to interfere with any of the witnesses in this case in the form of covert or avert action whether by himself or through others. He should not approach, call or visit the potential witnesses in this case.
  - d) The accused to attend before the OCS, Narok police station every month on a date to be set by the OCS and the accused.



- e) The accused to attend court if and when required.
- f) Failure to observe any the terms and conditions set in (b), (c) and (d) above will result in the bond being cancelled.

24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2023**

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**F. GIKONYO M.**

**JUDGE**

**In the presence of:**

- 1. Accused person**
- 2. Ms. Mwaniki for DPP**
- 3. Kasaso – CA**
- 4. Korir for the accused person**

