



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mathu (Criminal Case E027 of 2022)
[2023] KEHC 1215 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E027 OF 2022
RB NGETICH, J
FEBRUARY 23, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER GITARI MATHU ACCUSED

RULING

1. The accused herein Peter Gitari Mathu was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on 1st and 2nd day of July, 2022 at Githiga Primary School Staff Quarters in Githiga Location, Githunguri Sub-County within Kiambu County murdered one Nancy Waruiru Mundia.
2. On July 20, 2022 the charge and its full particulars were read over and explained to the accused. He pleaded not guilty. A plea of not guilty was entered.
3. The prosecution counsel Mr Gacharia was opposed to the accused being granted bail. He informed the court the deceased was the wife to the accused and one of the key witnesses is their child. He sought time to file an affidavit opposing bond.
4. Members of the victim's family namely Ann, Paul and Alice each filed an affidavit disposing that the key witness is a minor who is the child of the accused and the accused is likely to interfere. They further stated that the child is in the custody of the relatives of the accused and if the accused is released, there is a possibility of interfering with the minor's evidence.
5. The court called for a pre-bail report to assist understand the circumstances surrounding the offence which could inform the court in determining whether to release the accused on bond pending trial. The pre-bail report was filed on December 2, 2022.



6. The defence counsel Mr Ndungu submitted that the accused is not a flight risk as he is a school teacher and he should be presumed innocent until proven guilty. He submitted that the accused was arrested on July 2, 2022, he has been in custody and is currently cooperating with the investigations; that he will abide by any condition set by the court; that the child has been moved to a safe place and thus no possibility of interfering with the minor.
7. From the pre- bail report, the community indicate that the accused was a teacher at Githiga Primary School and described him as a person of good character; they are not opposed to the accused being granted bail. The family of the accused is willing to assist the accused if released on bail and ensure he attends court; the family is willing to deposit title as security. The accused urged the court to grant him reasonable bail terms to enable him continue taking care of his child.
8. Article 49(1)(h) of the [Constitution of Kenya](#) provides as follows:-

“An arrested person has the right 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. What constitute to compelling reasons has been explained in the case of [Republic v Francis Kimathi](#) [2017] eKLR where the court states as follows: -

“ ... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the [Constitution](#).
10. The purpose of bail is to ensure the accused person attends trial. The reason cited to persuade this court to deny accused bond is possibility of interfering with the key witness who is a minor and a child of the accused. The victim’s family stated that the child is in the custody of the relatives of the accused.
11. There is no confirmation that the minor aged nine (9) years is in safe custody and not in the custody of the relatives of the accused. There is no dispute that if the accused is released there will be interaction with the accused who is the child’s father. In my view there is a possibility of interference with the evidence of the minor and also security of the minor if accused is released.
12. From the foregoing, I find that there are compelling reasons to deny accused bond at this stage of the trial.

Final Orders: -

1. I hereby decline to release accused on bond.
2. The accused may renew bond application after the child has testified and security of the child is secured.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 23RD DAY OF FEBRUARY, 2023

RACHEL NGETICH

JUDGE

In the presence of



Martin – Court Assistant

Ms. Ngesa for State

Accused – Present

Mr. Kiarie holding brief for Ndungu Mwaura for Accused

