



REPUBLIC OF KENYA



**Republic v Odour (Criminal Case E040 of 2022)  
[2023] KEHC 1346 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1346 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E040 OF 2022  
RB NGETICH, J  
FEBRUARY 23, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BERNARD OKOTH ODOUR ..... ACCUSED**

**RULING**

1. The accused Bernard Okoth Oduor was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on September 7, 2022 at Uthiru Location in Kabete Sub-county within Kiambu County, Murdered Lucy Ngendo Waitathu.
2. On November 17, 2022 the charge and its full particulars were read over and explained to the accused in the presence of his Advocate Mr Ochieng. He pleaded not guilty and a plea of not guilty was entered.
3. The state counsel Mr Kasyoka urged the court to call for a pre- bail report as he gets instructions on the matter.
4. On December 1, 2022, Mr Kasyoka informed the court the brother to the deceased had raised serious issues and he intended to file an affidavit which the prosecution wishes to rely on in opposing bond. The court granted the prosecution three (3) days to file the affidavit.
5. On February 1, 2023, the state counsel Ms Ngesa informed the court the affidavit was yet to be filed as they had a challenge locating the investigating officer. She requested for two (2) days to file the affidavit.
6. On February 7, 2023, the prosecution had not filed the affidavit as the investigating officer was away on official duties. She however cited the reason for opposing bail as threats to the victim's family by the accused and the accused being a risk flight.
7. The counsel for the victim's family Mr Kairiuki filed an affidavit sworn by Diana Wambui Waitathu the deceased's sister. She averred that the accused is a flight risk who went at large after committing



- the offence and there is a likelihood of interfering with the witnesses as the accused had a special relationship with some of the witnesses; and the family of the victim is in fear of being killed by the accused if he is released on bail.
8. Mr Ochieng submitted that the accused has been in custody for long and urged the court to release the accused on reasonable bond/bail terms.
  9. The pre-bail report was filed on February 1, 2023. From the report, the local administration stated that the accused hails from Okumu village and during the offence, accused stayed in the village and he was not associated with unlawful activities.
  10. The accused's family pleads with the court to release the accused on reasonable bail and if released, the accused will reside with his uncle in Syokimau.
  11. The prosecution informed the court that after committing the offence, the accused went into hiding and was arrested in Homabay County.
  12. The [\*Bail and Bond Policy Guidelines\*](#) of March 2015 sets out the judicial policy on bail and bond at page 25 thereof as follows: -  
The following procedures should apply to the bail hearing: -
    - a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
      - a. That the accused person is likely to fail to attend court proceedings; or
      - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
      - c. That the exception to the right to bail stipulated under section 123A of the [\*Criminal Procedure Code\*](#) is applicable in the circumstances; or
      - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
      - e. That the accused person is likely to interfere with witnesses or evidence; or
      - f. That the accused person is likely to endanger national security; or
      - g. That it is in the public interest to detain the accused person in custody.
  13. Article 49 (1) (h) of the [\*Constitution\*](#) of Kenya provide that an accused person is entitled to be released on bail, unless there are compelling reasons. In the present case, the prosecution has cited the accused being a flight risk as one of the compelling reasons to deny the accused bond. The prosecution has also cited the interference with key witnesses who have a close relationship with the accused.
  14. An accused person's attendance to court during trial is critical stake in trial. The court is required to take into consideration the right of the accused and the need to serve justice to the victim's family. The accused has not disputed allegation that he went into hiding after occurrence of the offence and was arrested at Homabay which is out of this court's jurisdiction. The accused has not also rebutted the likelihood of interfering with witnesses.



15. From the foregoing, I find that the accused has not challenged compelling reasons advanced by the prosecution and the victim's family. I therefore find that there are compelling reasons to deny accused bond.

**Final Orders:**

1. I decline to release accused on bond.
2. Accused may review bond application at a later stage in the event circumstances change.

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

.....  
**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Martin – Court Assistant

Accused – Present

Mr Ochieng for accused

Ms Ngesa for State

