



**Republic v Angima (Criminal Case E005 of 2022)  
[2023] KEHC 1116 (KLR) (Crim) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E005 OF 2022  
DO OGEMBO, J  
FEBRUARY 21, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**IAN ANGIMA ..... ACCUSED**

**RULING**

1. The accused, Ian Angima, has applied to this court to be released on bond pending the determination of his case. The application, by way of Notice of Motion, is dated 22.2.2022 and is based on the fact that bail is a constitutional right. The prosecution has opposed this application and filed a replying affidavit of the investigating officer, IP Fred Kariuki, sworn on 25.1.2023.
2. In the affidavit of the Investigating officer, it has been noted that the alleged offence occurred in a domestic setting and 3 of the prosecution witnesses are 2 close friends of the accused, and a girlfriend of the deceased and so the accused is likely to interfere with the witnesses so as to undermine their evidence. That prosecution witnesses are relatives and friends of the accused person and there is reasonable apprehension that the accused will intimidate or interfere with the witnesses should he be released on bail.
3. It was also submitted that the accused is a flight risk likely to abscond as his travel history and passport are yet to be secured.
4. Both sides filed submissions to this application. On the side of the defence, it was submitted that bail can only be denied if there exists compelling reasons i.e reasons that are very strong and convincing as to justify the denial of bail. Counsel relied on the cases of *Republic versus Salim Said Nassoro & 2 Others* (2016)eKLR, and *Republic versus Danford Kubage Mwangi* (2016)eKLR, on what would constitute



compelling reasons. Also the case of *Republic versus Dorca Jelagat Ruto* (2019)eKLR, wherein Sewe J dealing with the issue of interference with witnesses held:-

“... This factor does not inexorably dictate that the accused person should be denied bail. Instead it may simply require the police or the court to attach suitable bond conditions to ensure that the relationship between the accused and potential witnesses does not undermine the interests of justice.”

5. The applicant also relied on the case of *Republic versus Danson Mganja and Another* (2010)eKLR on the importance of personal liberty. And lastly, the finding of Odunga J. in *Republic Versus Robert Zippor Nzilu* (2018)eKLR on the objective of granting bail i.e the attendance of the accused at his trial.

6. The prosecution side in their submissions relied on the case of *Republic versus Fredrick Ole Leliman and 4 others* (2016)eKLR, that self preservation is a natural reaction or response of any human being. And *Republic versus Dwight Sagaray & 4 others* (2013)eKLR, that;

“... for prosecution to succeed in persuading the court on this criteria, it must place material before court which demonstrated actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses, direct or indirect, incriminating communication between the accused and witnesses, close familial relationship between the accused and witnesses.”

7. And relying on *Republic versus Margaret Nyaguthi Kimeu* (2013)eKLR, the prosecution submitted that the strength of the prosecution’s case herein would justify a denial of bail to the accused person.

8. I have considered the submissions of both the defence and the prosecution in this application. Under Article 49(1)(h) of *the constitution*;

“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. The right to bail is therefore guaranteed and available to all accused persons irrespective of the nature of the charges that they face. There is however, a caveat or limitation to the right to bail. That should it be shown the existence of a compelling reason, then the right to bail may be denied.

10. As to what would constitute compelling reasons, the applicant, relying on the bail-bond policy guidelines has cited same including: Whether the accused is likely to abscond. Whether the accused is likely to commit or abet commission of a serious offence. Whether the accused is likely to interfere with prosecution witnesses. Whether the accused is likely to endanger national security or public interest.

11. The policy guidelines is obviously not exhaustive is spelling out what would constitute compelling reasons. Each case must therefore be considered on its own depending on its specific circumstances.

12. It must be stated from the onset that the main consideration for grant of bail is whether the accused shall turn up in court for his trial. (see *Republic versus Robert Zipper Nzilu*(2018)eKLR. All the other grounds of objection raised must accordingly therefore be considered along this spectrum.

13. The prosecution herein have opposed bail first on the ground that the accused likely to interfere with prosecution witnesses if released on bail. The reason given is that the witnesses are well known to the accused as neighbours and friend of the accused. For the prosecution to succeed in this ground, it is important that they show evidence of such interference or attempted interference (see the case referred



to of Republic Versus Dwight Sagaray & 4 others (2013)eKLR. No such proof has been shown to court.

14. I have also considered the fact that at least 4 witnesses have testified in this case. And the 4 witnesses are all closely related and known to the accused person. The prosecution in this objection, have not shown or disclosed any other remaining witnesses closely related or known to the accused as to persuade this court that if released on bail, the accused is likely to interfere with such witness. In the circumstances, I am not convinced that the prosecution have sufficiently established this objection as a compelling reason good enough to make this court deny the accused bail.
15. The second objection of the prosecution is on the ground that the accused is a flight risk likely to abscond should he be released on bond. This ground has been raised in view of the fact that the passport of the accused is yet to be secured. Again, the prosecution did not disgorge any evidence pointing at a likelihood of the accused absconding. The Hon. Justice Mohamed Ibrahim (as he then was) dealing in a similar situation in Republic versus Danson Mgunya & Another (2010)eKLR, held firmly that liberty is precious and no one liberty should be denied without lawful reasons in accordance with the law. As I have observed above, the prosecution has not shown any such lawful reasons. It is therefore my firm believe that this ground also fails.
16. There is no doubt that the accused faces a serious case, which upon conviction could attract upto death sentence. But since the case of the accused is yet to be determined, he still enjoys the right to presumption of innocence. The strength of the prosecution's case, on its own, therefore cannot amount to a compelling reason.
17. This court is therefore not convinced that the prosecution has proved the existence of any compelling reason good enough to justify a denial of the right to bail to the accused. I accordingly dismiss the objections of the prosecution and order that the accused may be released on bond on the following terms:
  - i. A bond of Ksh.3 million with 1 surety of a similar amount.
  - ii. An alternative of Ksh.300,000/= in cash bail.
  - iii. The accused to deposit his passport in court.
  - iv. If released, the accused is ordered never to interfere with or in any way contact any prosecution witness till this case is determined.
  - v. If bond, the accused is ordered to attend court at all time as the court may order from time to time till this case is determined.

Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**21<sup>ST</sup> FEBRUARY, 2023.**

**COURT:**

**RULING READ OUT IN OPEN COURT (ON LINE) IN THE PRESENCE OF THE ACCUSED (NAIROBI REMAND), MR. OMENKE FOR ACCUSED, MR. MIGELE FOR VICTIMS AND MS. GIKONYO FOR THE STATE.**

**D. O. OGEMBO**



**JUDGE**

**21<sup>ST</sup> FEBRUARY, 2023**

