



**Republic v Wahome (Criminal Case E013 of 2023)
[2023] KEHC 2626 (KLR) (Crim) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E013 OF 2023**

LN MUTENDE, J

MARCH 30, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

MAXINE MIRIGO WAHOME ACCUSED

RULING

1. Maxine Muringo Wahome, the accused/applicant was arraigned in court following allegations of having committed murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Through an application dated March 7, 2023, the applicant seeks to be released on bail/bond pending trial.
3. The application is premised on grounds that the applicant was initially arrested on December 12, 2022, produced in court on December 13, 2022 under Misc Application No E3922 of 2022 – Republic v Maxine Muringo Wahome; where she was released on a cash bail of Ksh 100,000/-.
4. That during pendency of investigations that were being conducted the applicant did not interfere with witnesses, commit any crime or abscond the court’s jurisdiction, but, diligently attended court as required.
5. Further, that the right to be released on bail is guaranteed by [the Constitution](#) which commands the court to ensure justice is dispensed with through fairness, equality and equity to all persons including the accused.
6. The application is supported by an affidavit deposed by the applicant where she avers inter-alia that following her arrest she cooperated and willingly submitted what was required by the Investigation Officer and even recorded a statement. She averred that: her roots are within the jurisdiction of this



court and she undertakes not to abscond; she will attend court at all times; and, she will not threaten, intimidate or otherwise interfere with witnesses.

7. The application is opposed by the State and the victims. Through an affidavit sworn by No 81556 Cpl. Diana Angote, the Investigating Officer in the matter, she contends that there is a likelihood of the accused absconding in light of the strength of evidence pointing to her culpability. That she may interfere with witnesses who are neighbours and security guards where the incident occurred.
8. That the conduct of the accused immediately after the commission of the offence in choosing her parents as the first responders and shielding the family of the victim from specifics of the incident and further withholding their witness statements to the Police until compelled to do so, is reason enough to believe that the accused is keen on misleading, misdirecting and misrepresenting facts; conduct that is intended to influence the outcome of investigations therefore a compelling reason for denial of bond.
9. That the safety of the victim is also in jeopardy should she be released as the victim is a well-known celebrated rally icon with a wide following from rally enthusiasts and the wider public.
10. The application was disposed through oral submissions. Mr. Murgor S.C. the lead Counsel for the defence urged that the accused cannot interfere with investigations as no evidence to that effect was rendered; locking up an innocent person for their own safety to start a jail term is abusive of *the Constitution*; there is no strong evidence disclosed that points at the accused person's guilt; public interest cannot be invoked to lock up a young lady of 25 years like the accused; who abided to the terms of bail set by the Chief Magistrate.
11. Mr. Andrew Mukite emphasized how the applicant voluntarily and religiously attended court and urged that her conduct of having locked herself up in the house after the incident was not a conduct of a person who was a flight risk. That her constitutional right to be granted bail is not diminished.
12. Mr. Steve Kimathi urged that pursuant to Article 49(1) (h) of *the Constitution*, bail could only be denied under special circumstances. That pursuant to Bail and Bond guidelines the Prosecution must establish cogent evidence but not mere allegation or element of suspicion. He dismissed averments by Corporal Angote as mere allegations.
13. Mr. Mulama, Prosecution Counsel emphasized safety of the accused as a ground that the court should consider in determining the question of bail as set out in Section 123A (2) (b) of the *Criminal Procedure Code*.
14. Admitting that the accused did attend the court religiously in the course of investigations, he submitted that the accused now faces a charge of murder which is serious.
15. That the question of interference with witnesses does not only refer to the prosecution witnesses but the defence witnesses as well. He called upon this court to interpret interference with witnesses in a broader manner as taken by Gikonyo J. in the case of *Republic v Joktan Mayende & 3 others* (2012) eKLR.
16. That a perceived right by the victim's family is a good ground to deny an accused bail and with the sphere of influence that the accused, a rising and budding star of international repute enjoys in rally tracks would make it harder for the witnesses to have courage to testify against her in court. In this respect counsel called upon the court to be persuaded by the case of *Republic v Fredrick Ole Leliman and 4 others* (2016) eKLR where the accused were denied bail.
17. Ms. Kihara, Counsel for the victims urged that the accused may flee and/or interfere with witnesses who may be afraid of adducing evidence.



18. I have duly considered rival arguments, affidavits deposed and all authorities cited.
19. An accused person is presumed innocent until proven guilty. In the case of R v Oaks (1986) IRCS it was held that:-

“...The presumption of innocence lies at the very heart of the criminal law and is protected expressly by s. 11(d) of the Charter and inferentially by the s. 7 right to life, liberty and security of the person. This presumption has enjoyed longstanding recognition at common law and has gained widespread acceptance as evidenced from its inclusion in major international human rights documents. ...”

20. Therefore, the accused should not be deprived of liberty as it may be subjecting the person to pre-trial detention. The State has the interest of ensuring the accused attends trial and in so doing there could be instances that may call for the accused being remanded in custody. For that reason in determining the question of bail/bond, the court must balance between the rights of the accused/victims and justice.

21. According to Article 49(1)(h) of *the Constitution*, an accused has a right of being released on bond or bail but this may be limited by some circumstances. The provision of law stipulates that:

An arrested person has the right

- (h) To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

22. The exception to the right to bail is enacted in Section 123A of the *Criminal Procedure Code(CPC)* that provides thus: .

- (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

- a) The nature or seriousness of the offence;
- (b) The character, antecedents, associations and community ties of the accused person;
- (c) The defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
- (d) The strength of the evidence of his having committed the offence;

- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

- (a) Has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- (b) Should be kept in custody for his own protection.



23. While cogitating as to whether or not to grant bail the court is required to take into account what is clearly expressed in the Kenya [Judiciary Bail and Bond Policy Guidelines](#) that provides as follows:

- “(a) (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. “

24. In the case of [Republic v William Wa Mwangi](#) (2014) eKLR, Githua J stated that:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus to demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail -See R v Danson Maonya and another High Court of Kenya Mombasa Criminal Case No 26 of 2008. Republic v Thomas Muthus Nzii (Nrb) Misc Cr Appn No 13 of 2010 , Republic v Daniel Musyoka Munya and two others High Court Criminal Case No 42 of 2009 (Mombasa)”

25. The definition of “Compelling reasons” is omitted in [the Constitution](#). In the case of [Republic v Joktan Mayende & 4 others](#) (Supra) the court defined the term compelling reasons thus:

“...the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by [the Constitution](#).”

26. The reasons given should therefore not be based on assumptions. These should result into the conclusion being truthful and justifiable. In that regard, compelling reasons justifying incarceration of an accused during trial should vary depending on circumstances of each case for facts of cases cannot be similar.

27. I have been called upon to find that on the question of the strength of the case, there is no evidence to support the charge hence the accused should be released on bond. Committal documents have been availed for perusal by the court, but, these are documents that are yet to be subjected to examination and tested in cross-examination. Therefore, the same cannot be dismissed as constituting evidence favourable to the release of the accused on bail.



28. Of paramount importance when considering whether or not to grant bail is the question whether the accused will turn up for trial. The instant charge being murder has serious consequences in the event of conviction. This may tempt the accused to abscond, but, special reasons should be given why bail should not be granted.
29. The State and the victims are apprehensive that the accused may abscond from the jurisdiction of the court so as to escape the serious charges as she hails from an influential family. The State was required to demonstrate that if granted bail the accused will flee and become a fugitive from justice. Prior to being arraigned in the instant matter, the accused was being investigated for the offence of causing grievous harm. When the deceased succumbed to injuries sustained, the accused was out on a cash-bail of Ksh 100,000/- It has not been alleged that she attempted to flee the country.
30. It has not been demonstrated that the court cannot impose conditions that may deter the accused from thinking of absconding.
31. On the issue of interference with witnesses, In the *Joktan Mayende case* (Supra) the court gave various scenarios of interference with witnesses. The court stated that:

“All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with Witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused...

In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general as envisioned by the people of Kenya in the Preamble to *the Constitution* of Kenya 2010.”

32. It is speculated that interference may even be directed to both the prosecution and defence witnesses. The possible defence witnesses herein may be parents of the accused who recorded statements having been the first responders at the scene. These are people who have been with the accused all along such that the question of interference may not arise. As for the neighbours and security guards, upon release on bail by the lower court, there was the opportunity of the accused interfering with them, but nothing was rendered to suggest any manner of interference having occurred. What was established by arguments of all parties herein is the conduct of the accused who could not make any decision after the act. She was portrayed as having acted as a child who needed guidance. In this regard, cogent evidence was required to establish the allegations which was lacking.



33. In the case of *S v Fourie* 1973 (12) SA 100at 101, it was stated that:

“...If there are no indications that the accused will not stand trial if released on bail or that he will interfere with witnesses or otherwise hamper or hinder the proper course of justice, he is prima facie entitled to and will normally be granted bail...”

34. The question begging is whether it is necessary to have the accused detained for purposes of protecting her. The pre-bail information report filed following inquiries carried out by the social officer show that secondary victims in the matter acknowledge the accused’s constitutional right to bail/bond but oppose her release on bond. They have denied having been threatened by the accused directly or indirectly through proxies.

35. It is apparent that victims are grieving because of what transpired but there is nothing to suggest that the accused person’s life may be in danger if released on bond.

36. The upshot of the above is that no forceful or convincing reasons have been put forward requiring the accused person being denied bail. Therefore, I make orders thus:

- a. The accused is granted bond of Kenya Shillings Two Million (Ksh 2,000,000/-) with a surety in a like sum.
- b. She will be required to deposit her passport with the Deputy Registrar, High Court-Criminal Division.
- c. Any travel out of the country, if necessary, shall be authorized by the court.
- d. Upon release, she will be barred from contacting witnesses who have recorded statements, with an exception of her parents; Beverly Grace Wanjiku Kabinu and James Gichu Wahome.
- e. In event that she disobeys conditions set, the State will be at liberty to apply for cancellation of the bond.

37. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THROUGH MICROSOFT TEAMS AT NAIROBI,**

THIS 30TH DAY OF MARCH, 2023

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Mr. Mulama for the State

Mr. Mwaura for the State

Mr. Murgor SC.

Mr. Kimathi for the Accused (Defence)

Mr. Musangi

Ms. Kihara holding brief for Mr. Chege for Victim



Accused present virtually from Langata Women's Prison

Court Assistant – Mutai

