



REPUBLIC OF KENYA



**Republic v Gatimu (Criminal Case E002 of 2023)
[2023] KEHC 3393 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E002 OF 2023
PM MULWA, J
APRIL 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIZABETH WAIRIMU GATIMU ACCUSED

RULING

1. The accused herein Elizabeth Wairimu Gatimu was charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*.
2. The particulars are that on the night of 8th - March 9, 2019, at Gatanga C.C.M Secondary School in Gatanga Sub-County within Muranga County murdered Ebbe Noelle Samuels.
3. The accused was arraigned in court for plea taking on February 9, 2023, and upon the charge and the particulars thereof being read, she denied the same. A plea of not guilty was entered.
4. The accused counsel filed an application to have the accused released on reasonable bail terms. The application was opposed by the prosecution counsel.
5. The court directed that advocates file written submissions in respect to the bail/bond application, and these were highlighted by the respective counsel during the hearing of the application.
6. I will give a summary of the highlighted submissions herein below.

Defence Submissions

7. Mr Mulindi counsel for the accused submitted that the bond provisions under article 49 of the *constitution* is a right to the accused person unless there are compelling reasons and the right cannot be taken away from the accused. Article 50 (2) thereof is also relevant as the accused is supposed to be admitted to bond as she needs time to prepare her defence.



8. Article 25(c) of the *Constitution* accords the accused the right to fair administrative action. It was further submitted that the pre-bail report clearly stated the accused deserves to be granted bond. The family is prepared to ensure the accused complies with any condition set by the court. That the accused is currently on interdiction and she needs to fend for her family. The accused right to liberty should not be curtailed.
9. Counsel further submits that the prosecution has not exhibited any compelling reasons to deny the accused bail. That the accused is a person of good character and she commits to abide by the bail/bond terms.
10. Mr Waweru submitted that the assertion that the accused has contacts of 13 students is far-fetched, that the accused has no salary and is not in a position to trace the witnesses as most of them completed High School. The accused has no means to interfere with the witnesses.
11. Counsel urged the court to admit the accused on reasonable bail terms

Prosecution submissions

12. Mr Kelwon counsel for the state opposed the application and associated himself with the submissions filed by counsel for the victim's family. Counsel submits the pre-bail report is inaccurate as it fails to capture the sentiments of the victim's family, the report was done hurriedly and failed to capture the core issues. That the report indicates it is for criminal case No E038 of 2022 which is a clear case of copy and pasting. The report is thus unreliable and not of any help to the court.
13. Counsel submits the deceased died aged 15 years and less than 50 days after being admitted in school where the accused was the head teacher. There is a likelihood of interfering with witnesses. Counsel urged the court to hold the accused in custody until at least the 13 witnesses, who were students in the school have testified.
14. Mr Gacharia, counsel for the state, in opposing the application, cited interference of the witnesses as a key reason because a number of students were still yet to be interviewed and record statements.
15. He submitted that the right to bail as per article 49 of the *Constitution* is not absolute. And further that the denial to bail is not a verdict of guilty against the accused person, but is aimed at ensuring enough safeguards to guarantee fair trial. It was further submitted that according to the investigating officer the accused has great connections and if allowed liberty the court will fail to get a bulk of the evidence most of which comes from the school.
16. Counsel urged the court to deny the accused bail.
17. Mr Ndegwa Keroko, counsel for the victim's family associated himself with the sentiments of the prosecution counsels and urged the court to deny the accused bail as they are compelling reasons. The offence in question is a unique one as it involved a minor who was only 15 years at the time of her death.
18. Mr Keroko further submitted that the accused had in the past 4 years harassed some of the witnesses. One witness was suspended 5 times in a term and caned and at some point she contemplated suicide. That this matter had taken too long to be commenced as some witnesses have been cautioned about talking of the matter. That 3 witnesses' whereabouts are still unknown to date.
19. Further counsel submits that the accused person safety is not guaranteed and thus there is need for the state to protect the accused. There is the issue of erosion of public confidence in the administration of justice due to the delayed arrest of accused person.



Rebuttal By Defence

20. In rebuttal Mr Khayisi counsel for the accused submitted that whether or not the case number was misquoted the content of the report relates to the matter in question. The evidence to be adduced by the witnesses will be verified through cross examination during trial, and that there ought to be tangible evidence that the accused has interfered or is planning to interfere with the witnesses.
21. Counsel submits the prosecution has not adduced any compelling reasons to deny accused bond. The police have had all their time to procure the evidence of all witnesses. And there is no evidence that the delay in prosecuting this case was occasioned by the accused. The accused equally wants to know the truth about exactly what happened. He urged the court to grant reasonable bail to the accused.

Analysis And Determination

22. I have considered the application, the replying affidavit, the submissions and counsel arguments in support of their various positions. The issue for determination is whether the accused should be released on bond/bail pending trial and if so on what conditions.
23. The pre-bail report filed on February 27, 2023 indicate the accused is willing to abide by any conditions set out by this court. The accused is willing to attend court as and when called to. Her family is willing to secure her release on bond.
24. The community describes the accused as a lovable and warm, committed person. Prior to her arrest she was key in counselling services. The church community where she has been a member for 10 years is not opposed to the accused being released on bail.
25. The victim's mother is still psychologically affected and she opposes the accused being granted bail. She is concerned with the accused threatening and interference with the witnesses who are former students of CCM Gatanga.
26. Article 49(1)(h) of the Constitution provides that: -
An accused 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.
27. I do concur with the prosecution counsel that bail pending trial is not absolute. The court is under a duty to inquire whether there are compelling reasons that would lead to denying accused bail.
28. The Judiciary Bail and Bond Policy Guidelines (March 2015) at p. 25, in regard to compelling reasons, provides thus: -

“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.”
29. The prosecution in opposing the accused release on bail, cites interference and intimidation of witnesses. According to the prosecution most witnesses are (or were) students of the C.C.M Gatanga Secondary School where the accused is a deputy head teacher.
30. On the other hand, the accused’s counsel contend that she has no financial muscle to interfere with the witnesses as she has been interdicted. It was submitted for the accused that the prosecution has not established the existence of compelling reasons to warrant the court to deny her bail/bond on reasonable terms.
31. From the court record, I note that most witnesses have recorded their statements save for the 3 witnesses which the prosecution informed the court that the investigating officer has had difficulties in tracing them since they completed form four.
32. Both the complainant and the accused are in pursuit for justice, the victim’s justice will be served if the accused goes through a fair hearing and the witnesses are enabled to attend court and testify. If the accused is most likely to interfere and threaten witnesses, then justice will not be realised. The court appreciates the position of the accused person and her influence in the society and there is a likelihood of interfering with the witnesses.
33. In *Kelly Kases Bunjika v Republic* [2017] eKLR, Muriithi, J was of the view that:
- “The second limb of paragraph (b) of sub-section (1) of section 123A CPC must be read separately and disjunctively from the first part so that the court considers whether the accused ‘if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody’...Of course, the accused is standing trial for all the alleged offences of robbery with violence, escape from lawful custody and assault, and he is entitled to the presumption of innocence. It is no derogation of his right to that presumption of innocence that he is refused bail; it is merely the exercise of the court’s mandate to grant bail as constitutionally empowered. It only means that the court finds a compelling reason within the meaning of the *Constitution* to refuse bail in the particular case.”
34. The prosecution has demonstrated that the possibility of witness interference by the accused person is real. And more so those of the witnesses who were, are still are, under her direct supervision at the work place, by virtue of being the Deputy Head of School at the C.C.M Gatanga Secondary School.
35. In the circumstances I find the prosecution has established the existence of compelling reasons to deny accused bail. In my view, justice will be served if the prosecution is allowed to call the thirteen (13) or so it has crucial witnesses it has isolated to testify in this case before admitting the accused to bond/bail. This will guard against threats to and interference of witnesses. The accused may apply for review of the bail application at a later stage in the trial.



36. Final orders

- a). The application dated February 1, 2023 is dismissed.
- b). The accused Elizabeth Wairimu Gatimu to remain remanded in custody until the key witnesses have testified, with the liberty to re-apply then.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 27TH DAY OF APRIL, 2022.

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P.M. MULWA

JUDGE

In the Presence of:

Kinyua/Dualle – Court Assistants

Accused – Present (virtually from Langata W/P)

Mr. Muriuki – For the state

Mr. Waweru, Ms. Khayisi & Mr. Mulindi – for Accused/Applicant

Mr. Keroko Ndegwa – for the victim’s family

