



**Republic v Silatei (Criminal Case E018 of 2022)  
[2023] KEHC 17907 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17907 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE E018 OF 2022  
F GIKONYO, J  
APRIL 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ZACHARIAH NGETICH SILATEI ..... ACCUSED**

**RULING**

1. The accused person herein is facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. His defence counsel applied on December 13, 2022, that he be admitted to bond on such reasonable terms. Defence counsel argued that his client understood that he has a solemn duty to attend court. He stated that the accused has been extremely cooperative during the time he has been in custody.
3. The prosecution opposed the application for bond and filed the following four affidavits in support of their objection to bond, that is;
  - i. Further affidavit by Mopel Kinyamal Sena sworn on 20/01/2023.
  - ii. Affidavit by Mopel Kinyamal Sena sworn on 22/12/2022.
  - iii. Affidavit of Olonana Kirinkol Jarvis Kiswaa sworn on 13/12/2022 and;
  - iv. Affidavit of CPL Eric Munene of 13/12/2022.
4. The prosecution counsel and the four affidavits raise the following reasons which they believe constitute compelling reasons not to release the accused on bond, to wit: -
  - i. Nature of the offence- that the accused is charged with a very serious charge murder that attracts maximum sentence of death, if convicted and thus increases temptation for him



to abscond trial. That the evidence gathered so far show that the accused participated in commission of the crime as per the covering report.

- ii. Witness interference -some of the key witnesses in the case are close relatives and hence vulnerable witnesses due to the manner under which the offence was committed. Some of the witnesses worked in the home of the deceased have since left due to threats from the accused's relatives and switched off their phones. The presence of the accused person in the village is likely to intimidate the witnesses.
  - iii. Flight risk- the accused fled the scene after commission of the crime. That the crime scene was torched and his house burned down. Accused was sacked due to breach of law. He also exited USA without due process.
  - iv. Attempted suicide-The accused person attempted to take his own life by ingesting what is suspected to be pesticides at different location (Chemukta) from the crime scene where he was rescued by "good samaritans" Who found him in an unconscious state. The accused was rushed to AIC Litein mission hospital in Kericho county where he was admitted on 1/11/2022.
  - v. Safety and security of the accused- -that the accused resided in Melelo area while the family of the deceased resides in Sogoo location at the border of the two locations. that due to the death of the deceased there is still tension and anger in the entire area directed towards the accused and hence his own safety will be jeopardized if released on bail. That it will be in the interest of the accused if detained pending hearing and determination of his case due to his own safety and health and further to avoid him from making any possible suicide attempts.
  - vi. Bad blood - that the minors were denied a chance to attend their mother's funeral.
5. The victims also opposed bail. Mr. Kinyanjui cited section 10 of the [\*victim's Protection Act\*](#) on the safety of the victims. He argued that three daughters have expressed their fear.
6. The prosecution relied on the following authorities;
- i. The [\*Constitution\*](#) of Kenya
  - ii. The [\*Victim Protection Act\*](#)
  - iii. [\*Criminal Procedure Act\*](#)
  - iv. The [\*Evidence Act\*](#)
  - v. [\*Director Of Public Prosecutions v Charles Njogu Kamande\*](#) [2020] eKLR
  - vi. [\*Republic v Benard Kippasi Moyongo & Another\*](#) [2021]eKLR
  - vii. [\*Republic v Fredrick Omonywa Onyango 7 Another\*](#) [2016] eKLR
  - viii. [\*R v Jaktan Mayende & 3 Others\*](#) [2012] eKLR
  - ix. [\*Republic v John Gatembo Mangi\*](#) [2018] eKLR
  - x. [\*Republic v Peter Chege Mucheru\*](#) [2019] eKLR
  - xi. [\*Republic v David Mwangi Gitau & Another\*](#) [2021] eKLR
  - xii. [\*Republic v Emmanuel Olduati Sharkoyio\*](#) [2021] eKLR
  - xiii. [\*Republic v Lkiteku Lekarato\*](#) [2018] eKLR



- xiv. [Republic v Susan Gakii Ireri](#) [2021] eKLR
  - xv. [Re Public v Sarah Wairimu Kamotho](#) [2019] eKLR
  - xvi. [Republic v David Ngasora Nyamongo](#) [2011] eKLR
  - xvii. [Mivhael Juma Oyamo & Another v Republic](#) [2019] eKLR
  - xviii. [Republic v Robert Zippor Nzilu](#) [2018] eKLR
7. The accused person filed two replying affidavits both sworn on 7/1/2023. Three affidavits in support of the application for bond were also filed.
- i. Cheruiyot Korir an assistant chief Sogoo location swore an affidavit on 5/1/2023.
  - ii. affidavit of Brigadier (Rtd) Daniel Pyaban sworn on 7/1/2023.
  - iii. affidavit of spouse Caroline Cherotich sworn on 5/1/2023.
8. The accused person and team of defense counsel responded to the reasons the prosecution believe constitute compelling reasons not to release the accused on bond, to wit:
- i. Nature of the offence-that only death of the deceased is factual but circumstance and culpability is still an issue to be determined by this court. Nature of the offence may not be a compelling reason. The evidence gathered is immaterial as trial is yet to commence. Evidence will come during trial. A covering report is merely a report not evidence. It is the court to decide.
  - ii. Flight risk-Accused is not a flight risk as no material has been placed before this court to show he evaded authority. That the accused married two wives. That biko's submission that the accused breached the law is not substantiated by way of affidavit or evidence. No iota of evidence that he was deported or had been charged for any breach of law. That the pre bail report confirms he is not a flight risk.
  - iii. Attempted suicide-On the attempted suicide, he argued that there is no evidence adduced on attempted suicide. The evidence by the prosecution is that he is fit to stand trial. Attempted suicide are mere theories. They have not been tested
  - iv. Safety and security of the accused person- that he is not a foreigner and if so the constitution does not deny bond on mere fact of being a foreigner. That the report does not confirm suicide. That no material evidence has been placed before this court in support of the claims neither has ethnic diversity been an issue to the residents of the area at all. That there is no conduct that can cause disturbance or breach of peace as a result of the murder. There is no hostility or anger towards the accused person regarding the incident. He intends to keep off Sogoo location entirely throughout the trial duration if the court directs so. That his two minor children are under his wife's care at his Sotik home where they rightly belong and not relatives. That the deceased's brother forcefully buried his deceased wife at her parents' home rather than his farm against his wish and without notice to his family and relatives so as to bring it as evidence of bad blood in this case. That he filed suit no. E174 of 2022 against the deceased's brother and Umash funeral home seeking to restrain the burial and release of deceased body from the mortuary which injunction application failed on a technicality and the deceased's brother hurriedly buried his deceased wife at her father's home against the accused's culture and traditions and without any notice to the accused's family and relatives. That to suggest that there is an attempt to eliminate evidence is not only scandalous but also futile imagination



since there is no evidence in support whatsoever. That the tension claimed is unfounded. The allegations of tension and flare ups are dangerous propositions coming from state organs who bear the duty of offering security.

- v. Witness interference- that witness interference was not supported by substantive evidence. Mere suspicion is not enough. No evidence of threats to his children. He is not aware of the prosecution list of witnesses neither will he bother any as he commits to keep his distance from the area if directed by the court for sufficient reason. He stated that the accused person undertakes not to interfere with any witnesses
  - vi. Medical condition-that the accused has high blood pressure, diabetes and advanced benign prostatic hyperplasia (BPH)which need a surgical intervention. That his health is relevant to the preparation to stand trial. His ailment should not be taken casually.
9. The accused person argued that his home with the deceased was situated at Sogoo location and not Melelo location. That the chief for Sogoo is Mr. Sabuk Kobey and not Olenana Kiriokol Jarvis Kiswaa. He also deponed that Mr. Cheruiyot Korir, assistant chief visited the scene and called the police.
  10. Mr. Kibet argued that [article 50](#) provides for presumption of innocence. That several affidavits have been filed to create false impression. That the chief from a different jurisdiction contradicts the pre bail report. That under the constitution all offenses are bailable.
  11. The defense urged this court to balance the rights of the accused and interest of justice as per bond guidelines; his community ties, parental responsibility. He further urged this court to admit him to bond as there are no compelling reasons laid before the court.
  12. The defense has relied on the following authorities;
    - i. Article 49, 50(a) of the [Constitution](#)
    - ii. Section 123 [ACPC](#)
    - iii. [Francis Karioko Muruatetu & Others](#)
    - iv. [Republic v John Kahindi Karisa & 2 Others](#) [2010] eKLR
    - v. [Republic v Joseph Kuria Irungu](#) [2020] eKLR
    - vi. [Republic v Dansoon Mgunya & Another](#) [2010] eKLR
    - vii. [Republic v Robert Zippor Nzilu](#) [2018] eKLR
    - viii. [Republic v Danson Ngunya & Another](#) [2010] eKLR
    - ix. *M'Lunguzi v Republic* Cmsca Appeal No. 4 of 1995.
    - x. *Republic v David Nyasura Nyamongo* -Criminal Case No. 90 Of 2010 (Unreported)
    - xi. *Saidu v State* 1982 2 NCR4
    - xii. *Oscar Kipchumba Sudi v R.*

### **Bail Assessment Report.**

13. The gist of the bail assessment information report dated 19/01/2023 is that the accused lived in the USA for over 20 years. He came back, worked with NGOs at different levels and at the time of dismissal he was CEO. Currently he is a farmer. He is married to two wives. He is diabetic, and hypertensive. He



was scheduled for a prostrate operation. the children of the deceased are divided into two. Three girls; 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> born stay with their maternal grandmother while the last two boys stay with their step mother in Sotik. The boys miss their father and wish him back home. The girls objected to their father being released. The three girls gave the following reasons;

- I) they fear for their lives- the 2<sup>nd</sup> born thinks that the father do not like her since she was close to the deceased.
  - ii) most of their basic needs were taken care of by their mother. The accused would hardly be seen at home and when he comes he would quarrel the deceased.
  - iii) believe the accused took away their source of happiness.
  - iv) they were mistreated by they step mother to the extent of dipping them in a drum of cold water as a way of punishment.
  - v) that though the accused is in remand he still has influence outside and is even constructing a new house therefore he can influence his children. Therefore, they will be comfortable and psychologically settled if the accused remains in custody until the matter is determined.
14. The family of the deceased the maternal side objected to the release for the following reasons;
- a) fear of prosecution witnesses will be interfered with.
  - b) might attempt to commit suicide.
  - c) will interfere with the healing and coping process of children.
  - d) no family member of representative from the accused side has ever send a word of condolence.
  - f) he is a flight risk. He might decide to go back to USA.
15. The family of the accused pleads for his release. The community and the area administrative do not object for his release. The area administration does not view him as a flight risk and do not foresee emergence of any kind of hostility if the accused is released on bond.
16. The probation officer recommended that the issue of bond be suspended for some time until the children have been taken through counselling sessions. The issue of bond can then be revisited at a later date when the children have stabilized.

## **Analysis and Determination**

### **Right to Bail**

17. All persons charged with a criminal offence are entitled to be released on bond on reasonable conditions except where there are compelling reasons not to be so released (art. 49(1)(h) of the *Constitution* of Kenya, 2010). This is on the premise of the right to be presumed innocent until the contrary is proven (*R. v Richard David Alden* [2016] eKLR.)

### **Compelling Reason and Burden of Proof**

18. The law places the onus of proving compelling reasons upon the prosecution- these are reasons that justify the limitation of the right to liberty in the context of article 24 of *the Constitution*.



## **Objective of Bail**

19. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial (*Muraguri v Republic*).

## **Grounds for Objecting Bond**

20. The prosecution cited three main grounds on which they opposed bail;
- i) likelihood of absconding or flight-risk;
  - ii) safety and security of the accused person; and
  - iii) witness interference.
21. I will take each in time.

## **Flight Risk.**

22. In his affidavit, CPL Munene averred that the accused person fled the scene of crime after commission of the offence. The victims are apprehensive that the accused may fly out of the country.
23. Counsel for the accused person has stated that no proof has been laid to substantiate this claim.
24. The depositions are bare since the prosecution have not established any attempts to defeat his arrest or to escape when they came looking for him.
25. The statement by the prosecution is neither here nor there, and is devoid of any supporting evidence.
26. In sum, merely stating that an accused person fled the scene is not a compelling reason except with cogent evidence. I reject it.

## **Safety and Security of the Accused Persons.**

27. The investigating officer in his affidavit stated that there is tension and anger in the entire area towards the accused person. Further that he may commit suicide.
28. The defense has responded that no evidence has been brought forth to prove this ground.  
Taking the law into own hands
29. Although it is my strong view that the ground that the accused person is likely to be attacked and get injured if released on bond should never be encouraged to be a ground for denial of bail; lest it should inadvertently promote or condone violence, disorder, and usurping of law by individuals or group of people; sometimes, it may not be appropriate to test the waters with the life of the accused especially where the victim is a member of the family of the accused. In such case, it may be imprudent to release the accused to go back to the same family he injured.
30. In this case bizarre scenarios, some of which almost degenerated to violence between the sympathizers of the discordant families of the deceased and the accused have been playing out in court. Notably, there has been in court, visible tension between the two families and their sympathizers in the manner they come and sit in or leave the court.
31. Accordingly, in the circumstances of this case, this could be a compelling reason to deny bail in the interest of the trial, the accused as well as the victims.



## Interference with Witnesses

32. A more potent ground, if proved, is the prosecution's allegation of likelihood of interference with prosecution witnesses. See *R. v Patius Gichobi* that proven interference with witnesses was an affront to the administration of justice and therefore a compelling reason contemplated by Article 49 (i) (h) of *the Constitution*.
33. See also a work of court in *R. v Jaktan Mayende & 3 others*, that:
- “...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.....Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give eschewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...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.”
34. Accordingly, the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond (*R. v Dwight Sagaray & 4 others*, 2013 eKLR)
35. The prosecution claims that some of the witnesses are close relatives of the accused and are likely to be interfered with by the accused. The vulnerable witnesses listed are the children of the accused and some employees who worked for the deceased- some of who left employment for fear of confrontation with the accused.
36. The children of the deceased are victims of the crime about whom the court bears the duty to uphold and protect their rights as victims of crime under Section 10 of the *Victim Protection Act* No. 17 of 2014 which provides that: -
- 10 (1) a victim has a right to: -
- (a) Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
  - (b) Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
  - (c) Have their property protected.
37. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of his family- his children-, and who are witnesses against him, exposes them to vulnerabilities such as of harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused person. It is highly possible that such witnesses may resign to fear and may not give evidence to avert unpleasant repercussions.
38. It is therefore, appropriate that these victims should be free from harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons; a right under section 10 of the *Victims Protection Act*. It is not also lost to the court that the safety of victims is to be taken into account in



determining bond issues. The safety of the children of the deceased especially those who are witnesses against him in the case cannot be guaranteed when the accused is free to mingle with them.

39. An employee as is the case here is not in any better situation. Interference with such witness by the employer is real.
40. Consequently, I find that the prosecution has proved that the accused is likely to interfere with witnesses herein.
41. I note that the accused stated that he undertakes to keep off Sogoo and not interfere with witnesses. The court takes the view that interference can occur at any stage of the matter and may be remotely or overtly done especially in this age of technology.
42. In light thereof, the court must ensure that the integrity of the trial is not prejudiced by acts of interference with witnesses by the accused person. Integrity of the trial guarantees fair trial (*R. v. Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No. 57 of 2016 (2016) eKLR and *K K K v. Republic* [2017] eKLR)
43. Before I conclude, I note the accused has raised concerns over his health. Nothing shows that his condition cannot be treated within the prison facilities or government facilities which aid the prison in such areas. In any case, a request for treatment in national hospitals is an option available to the accused.

#### **Conclusion And Orders**

44. In conclusion, I find there is a compelling reason not to release the accused person on bail. He will remain in custody during the hearing of the case. In light thereof, I direct the hearing of the case to be fast-tracked.
44. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 25TH DAY OF APRIL 2023.**

**F. GIKONYO M**

**JUDGE**

In the presence of:

1. Harrison for Victims (members of family)
2. Okinyi for Accused Person
3. Ondimu for DPP
4. Court Assistant – Mr. Kasaso

