



**Republic v Karugu (Criminal Application E056 of 2022)  
[2023] KEHC 18117 (KLR) (Crim) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL APPLICATION E056 OF 2022  
LN MUTENDE, J  
MAY 31, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AMBROSE MURIMI KARUGU ..... ACCUSED**

**RULING**

1. Ambrose Murimi Karugu, 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. On the February 23, 2023, the State filed an affidavit dated 15<sup>th</sup> November, 2022, deposed by No. 92262 Corporal Sabian Odongo, the Investigation Officer, in the matter who avers that after the act the accused fled leaving the deceased fighting for her life. Having escaped, he switched off his phone and boarded a vehicle to Kitui where he was planning to commit suicide. He was however located by officials of Obamana Sacco from his hideout who took him to Kayole Police station.
3. That the accused has never cooperated with the police in the investigations. He does not have a permanent fixed place of abode hence he is a flight risk with an ability of disappearing without a trace.
4. That he is known to witnesses, former workmates, neighbours and mutual friends hence he is likely to intimidate them. In this regard the State opposes the release of accused on bail.
5. Submissions were filed by the accused through the firm of Omenke Andeje & Co. Advocates. It is argued that the accused has an inalienable right to be released on bail and can only be restricted by the court if there are compelling reasons. That the accused should be presumed innocent until the contrary is proved.



6. Regarding the affidavit deposited by the Investigating Officer, it is submitted that the allegation that the accused escaped to Kitui and was planning to commit suicide is a lie and that the accused always cooperated with the police.

7. Further, that the court was called upon to rely on the guidelines set out in the bail and bond policy. Reliance was on the case of *Republic vs Salim Said Nasorro & 2 Others* (2016) eKLR where Kimaru J stated that:

“...The bail and bond policy guidelines recognizes as a matter of principle and constitutional imperative, that an accused person should be released on bond pending trial unless there are compelling reasons. What constitutes compelling reasons must be established by prosecution.”

8. On the question of the accused being likely to interfere with witnesses, the court is urged to be persuaded by the case of *Republic vs Dorcas Jelagat Ruto* (2019) eKLR where Sewe J. stated that:

“... 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 or bail conditions to ensure that the relationship between the accused person and potential witnesses does not undermine the interest of justice.”

9. An accused person in a criminal trial is presumed innocent until he is proven guilty. It is for that reason that the prosecution is required to adduce evidence in support of Its case to prove the case beyond reasonable doubt. In the case of *R Vs. 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. ...”

10. For this reason, an accused person should not be deprived of liberty as it may be subjecting the person to pre-trial detention, and in determining the question of bail/bond, the court must balance between the rights of the accused/victims and justice.

11. According to article 49(1)(h) of *the Constitution*, an accused has a right of being released on bond as murder is bailable, though the right is not absolute. Bail may be limited by some circumstances. That 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.

12. The exception to the right to bail is enacted in section 123A of the *Criminal Procedure Code*(CPC) that provides as follows:

(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.
13. When considering whether or not to grant bail, the court must 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. “

14. In the case of *Republic Vs. 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 VS Danson Mgunya and Another High Court of Kenya Mombasa Criminal Case No. 26 of 2008. Republic VS Thomas Muthus Nzii (Nrb) Misc. Cr. Appn No. 13 of 2010, Republic VS Daniel Musyoka Munya and two others High Court Criminal Case No. 42 of 2009(Mombasa )”



15. The definition of “Compelling reasons” is omitted in *the Constitution*. In the case of Republic Vs. 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*.”

16. Reasons advanced seeking incarceration of the accused should not be based on speculation but should be cogent. Compelling reasons justifying incarceration of an accused during trial vary depending on circumstances of each case.
17. 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 a person accused to abscond. The prosecution was called upon to demonstrate the accused person’s likelihood of not turning up for trial.
18. Annexures to the affidavit in opposition of grant of bail which were not reverted have demonstrated that following what transpired the accused fled from the scene of the incident and went to Kitui, where he contemplated committing suicide. This is proof that the accused has the propensity to flee from the jurisdiction of the court. This is an individual who should be remanded in custody for his own protection.
19. 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.”

20. It is alleged that there is a likelihood of the accused interfering with witnesses. It was stated lackadaisically without proof that the accused would interfere with witnesses. However, no cogent evidence was placed before court to buttress the argument. Denying the accused bail on that ground perse would undermine the proper function of the criminal justice system.
21. The question begging is whether it is necessary to have the accused detained for purposes of protecting him, and, the answer is in the affirmative.



22. The upshot of the above is that there are forceful or convincing reasons that have been put forward requiring the accused person being denied bail. However, an application for review may be made in event of change of circumstances.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 31<sup>ST</sup> DAY OF MAY, 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE**

Ms. Tum – ODPP

Mr. Omenke for the Accused/Applicant

Accused/Applicant

Court Assistant- Mutai

