



**Republic v Stephen & another (Criminal Case E001 of 2023)
[2023] KEHC 18291 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE E001 OF 2023
GMA DULU, J
MAY 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ALEX MUTWIRI STEPHEN 1ST ACCUSED

LUCY MUINDI 2ND ACCUSED

RULING

1. In this case wherein Alex Mutwiri Stephen and Lucy Muindi stand charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#), oral applications for bail have been made by the respective counsel Mr Mosioma for Alex (1st accused) and Mr Mutinda for Lucy (2nd accused).
2. The state through the Director of Public Prosecutions has opposed the request for bail, through an affidavit in opposition to bail filed by Cpl Philip Mnaro.
3. Before considering the request for bail, the court ordered the filing of pre-bail reports and the reports on each of the two accused persons were filed by John Riungu the Probation Officer Voi.
4. In oral submissions in court, Mr Sirima the learned Prosecuting Counsel relied on the affidavit of the investigating officer Cpl Mnaro and said that the 1st accused person had another pending criminal case in Thika Chief Magistrate Court No E2014/2022 for stealing by servant and was granted bond but absconded the trial until a warrant of arrest was issued against him. Counsel further relied on section 123(a) of the [Criminal Procedure Code](#) (cap 75) to oppose bail.
5. The prosecuting counsel emphasized that this is a case where the offence carries a heavy sentence and the previous record or conduct of the accused needs to be considered in determining whether to grant bail.



6. The prosecuting counsel also cited the Judiciary Bail/Bond Policy Guidelines and said that the 1st accused herein was likely to interfere with witnesses, because of this employment relationship with potential witnesses, as the deceased worked in the same company with the 1st accused who had been dismissed from service. In addition the deceased's wife and family members had made reports of receiving threats. The prosecuting counsel relied on the case of *Republic v Sabit Marmour Dong and Ajak Dau Akech* [2020] eKLR where a request for bail was refused by the court, and urged this court not to grant bail.
7. With respect to the 2nd accused person the prosecuting counsel emphasized that after 1st accused was arrested, the 2nd accused person went into hiding and was arrested at Dzitsoni in Kilifi only with great effort made by the police. In addition, both the accused persons were subject to robbery case pending at Voi Chief Magistrate's Court, relating to the motor vehicle of the deceased which was conveyed through the porous Tanzania border. Counsel also said that both accused persons were likely to cross the border into Tanzania. Counsel relied upon and emphasized the contents of the pre-bail reports filed by the probation officer.
8. Mr Mosioma for 1st accused person said that his client was a young driver of 27 years with a young family of 2 children. Counsel submitted that the 1st accused was yet to explain his absence from the Thika Court, as he was on driving duties to earn an income, during the time he was said to have absconded.
9. Mr Mosioma also stated that accused persons are always presumed innocent, and that his client undertakes to comply with conditions which will be set by the court and will not interfere with witnesses. Counsel further said that the two accused persons herein hailed from two different counties as 1st accused was from Meru county as was evidence from the pre-bail report.
10. On the pending Voi Chief Magistrate's criminal case, counsel submitted that it arises from the same transaction herein, and thus cannot be treated as a separate case. He said that the case of *Republic v Sabit* (supra) was distinguishable, as the accused therein was arrested at the airport, while his client does not have a passport.
11. Mr Mutinda for the 2nd accused Lucy Muindi on his part, submitted that his client was arrested in Kilifi but there was no evidence placed before this court that she was on the run, and that since there was no court order restricting her movement, the adverse allegations of the investigating officer in his affidavit against the 2nd accused were suspicious.
12. In any case, counsel submitted, at the time a report was made on the present case on April 24, 2023 the 2nd accused person was already in custody having been arrested on 2February 9, 2023. Counsel was of the view that his client would not interfere with witnesses.
13. Counsel for the 2nd accused also submitted that the pending criminal case at Voi Chief Magistrate's Court being a case in respect of this same matter, cannot be treated as a separate case and further that the relatives of 2nd accused were ready and willing to provide security and she had a fixed abode at Maungu and should thus be granted bail. Counsel lastly said that the case of *Republic v Sabit* relied upon by the Director of Public Prosecution was distinguishable as his client was not a security risk nor would she cause insecurity.
14. I have considered the request for bail for each of the two accused persons herein and the submissions of counsel for each accused as well as the submissions for Director of Public Prosecutions.
15. Under our present *Constitution* bail is available to all arrested persons irrespective of the nature on seriousness of the offence. Article 49(1)(h) of the *Constitution* is clear on this and provides as follows:-



- 49 An arrested person has the right
1.
 - (h) to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be so released.
16. Article 50(2) of the *Constitution* also provides that every accused person has a right presumed innocent, which presumption has been captured under the Bail Bond Policy Guidelines published by the Judiciary of Kenya.
17. In addition to the above, section 123A of the *Criminal Procedure Code* (cap 75) stipulates the parameters to be considered by courts in determining whether or not to grant bail. Further, the Bail and Bond Policy Guidelines under paragraph 4.9 explain how courts are to determine the existence of compelling reasons, by giving a list of some of the matters to take into account as follows:-
- i. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - ii. The strength of the prosecution case.
 - iii. The character and antecedents of the accused person.
 - iv. The failure of the accused person to observe bail or bond terms.
 - v. The likelihood of interfering with witnesses.
 - vi. The need to protect the victim or victims of crime.
 - vii. The best interest of child offenders.
 - viii. If the accused person is a flight risk.
 - ix. Whether the accused person is gainfully employed.
 - x. Protection of the accused person.
18. Courts have considered and determined bail or bond application in many and various cases. Ultimately each case depends on its own special facts and circumstances. This being a case of a charge of murder, the reasoning in the case of *Republic v John Kabindi Karisa & 2 other* (2010) Eklr, a persuasive authority can be a guide. In that case Ibrahim J. as he then was stated as follows:-
- “This constitutional provision came into force after the promulgation of the new Constitution. As a result of this, the provisions of section 123 of the Criminal Procedure Code which made the offences of murder, treason and robbery with violence non bailable offences became obsolete and in effect repealed and inapplicable....A murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”
19. In the present case, both accused persons have been charged with murder herein. It is a serious offence whose sentence is a maximum of death. It is admitted also that they are both charged before the Chief Magistrate’s Court at Voi with robbery with violence in respect of the vehicle of the deceased. None of those two cases has been heard. The 1st accused person also has a pending related criminal case at Thika Chief Magistrate’s Court.



20. There is no indication that the 2nd accused is employed, but the 1st accused is said to have been dismissed from employment where he worked with the deceased and he has not denied that position.
21. The 1st accused has also not denied that he was released on bail at Thika Magistrate's Court, but did not honour bail terms and a warrant of arrest was issued against him. In this court, his counsel has submitted that he failed to honour bond terms because of driving duties. He does not however say that he was prevented by circumstances beyond his control, nor why he did not explain his problem, in our existing situation where there are very efficient systems of facilitating quick communication.
22. In my view, there exist compelling reasons for this court to decline granting bail to both accused persons herein because of the multiplicity of serious criminal cases pending against them. The 1st accused also could interfere with witnesses. The 2nd accused or both of them could be tempted to jump bail and cross to Tanzania, where one can cross even without the necessity of producing a passport due to the porous border, and may in any case may cross legally using only a national identity card.
23. I thus decline to grant the two accused persons herein bail or bond. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF MAY, 2023 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:

Mr. Sirima for the State

Mr. Mosioma for 1st accused

Mr. Mutinda for 2nd accused

Both accused

Mr. Otolu court assistant

