



**Republic v Migiro & 3 others (Criminal Case E009 of 2023)  
[2023] KEHC 20378 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 20378 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E009 OF 2023  
WA OKWANY, J  
MAY 30, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EZEKIEL MOGENI MIGIRO ..... 1<sup>ST</sup> ACCUSED**

**PERIS ONDARA ..... 2<sup>ND</sup> ACCUSED**

**DENNIS ONDARA CLEMENT ..... 3<sup>RD</sup> ACCUSED**

**PETER NJOROGE KIRIKA ..... 4<sup>TH</sup> ACCUSED**

**RULING**

1. The four accused persons herein were jointly charged with two counts of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offences were that between the nights of 20<sup>th</sup> and 21<sup>st</sup> March 2023 at Egetugi village Sungututa Sub-location Gesima Location within Masaba North Sub-county, jointly with others not before court murdered Edward Morema Nyagechi and between the nights of 20<sup>th</sup> and 21<sup>st</sup> March 2023 at Egetugi village Sungututa Sub-location Gesima Location within Masaba North Sub-county, jointly with others not before court murdered Grace Mong'ina Morema.
3. The accused persons pleaded “not guilty” to the charges after which their Advocates on record applied for their release on bond pending trial.
4. Mr. Onsarigo, Counsel for the 1<sup>st</sup> and 4<sup>th</sup> accused, submitted that since this court had ordered for a pre-bail report in respect for the 1<sup>st</sup> accused, the same consideration should be made in respect to the 4<sup>th</sup> accused. He submitted that the 1<sup>st</sup> and 4<sup>th</sup> accused are not flight risks and should be released on bond.



5. Mr. Nyaberi, for the 2<sup>nd</sup> accused, submitted that the 2<sup>nd</sup> accused is a teacher by profession and that she stands the risk of losing her job should she continue to stay in custody. He added that the 2<sup>nd</sup> accused is a widow with young children who solely rely on her for their upkeep.
6. It was submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> accused are siblings and that they will not interfere with witnesses.
7. Counsel also applied for the transfer of this case to Kisii High Court for hearing and determination while arguing that the close proximity of the court to the scene of murder may present unusual challenges/difficulty.
8. Mr. Omenke, Counsel for the 3<sup>rd</sup> accused, submitted that Article 49 of the Constitution provides for the release of the accused persons on bond pending trial unless there are compelling reasons to deny bond. He added that the accused persons are deemed innocent until proven guilty.
9. Mr. Ochoki, Advocate watching brief for the family of the victims, opposed the application for bond and submitted that the children of the deceased and close family members are still living in fear following the murder of their kin. He urged the court to balance the rights of the accused and those of the deceased.
10. On the prayer to transfer the case to Kisii High Court, he submitted that no reasons have been advanced for the application for transfer. He added that the accused persons cannot dictate the venue of the hearing to court.
11. Mr. Chirchir, Counsel for the State, opposed the bond application while relying on the affidavit of the Investigating Officer Sgt. Elkana Mogire who averred that the accused persons are likely to interfere with witnesses who are vulnerable. Sgt. Mogire further averred that the 1<sup>st</sup> accused had been charged and convicted before Makadara Law Courts and that no sooner did he complete his jail term than he came back and eliminated the father of the complainant who is the deceased in the 1<sup>st</sup> count herein. He disclosed that the 1<sup>st</sup> accused is the grandson of the deceased persons.
12. It was submitted that the release of the 1<sup>st</sup> accused on bond will pose a grave risk to the family of the deceased. Mr. Chirchir submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons have no fixed abode and that they have a home in Uganda where they are likely to jump bail in the event they are released on bond.
13. It was further submitted that the 3<sup>rd</sup> accused is also an accused person in Makadara CMCR Case No. 2635/2020 where he had jumped bail and has a pending warrant of arrest while the 4<sup>th</sup> accused has a pending trial in a Robbery with violence case before Ruiru Court in Case No. E294/2021 which is still pending.
14. I have perused the affidavit of one Cliff Matundura Morema who describes himself as the son of the deceased persons in this case; Edward Morema Nyagechi And Grace Mongina Morema and a relative to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused herein. Mr. Matundura avers that the 2<sup>nd</sup> accused has been involved in activities of criminal nature and disputes with other family members that were reported to Ruai Police Station.
15. He further states that the 2<sup>nd</sup> accused at some point threatened to kill a relative one Obed Osebe Mosoti by pouring acid on him. The deponent is apprehensive that the accused persons will harm him and his family members should they be released on bond.
16. I have carefully considered the application for bond and the objection made by the Counsel for the victims and the State. I have also considered the prayer for the transfer of the case to Kisii High Court.



17. Regarding the application to transfer the case to Kisii High Court, I note that while this court has powers to transfer the case to another jurisdiction for hearing and determination, such a prayer must be supported by sound/cogent reasons. In the instant case, besides the claim that the close proximity of the court to the scene of the crime might present certain challenges, the nature of the challenges was not disclosed. I am not persuaded that the accused persons have made out a case for the transfer of the case to Kisii High Court. I therefore decline to make the orders to transfer the case to another court.
18. Turning to the prayer for bond, it is trite that bond is a constitutional right of every accused person. The court may however decline to grant the accused bond where compelling reasons have been advanced by the prosecution.
19. In the present case, I am satisfied that the reasons advanced by the prosecution through the affidavits of the Investigating Officer Sgt. Elkana Mogire and Cliff Matundura Morema indicate that 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused are repeat offenders whose criminal cases are still pending in other courts. The Investigating Officer is apprehensive that the said accused persons might jump bail or escape from the court's jurisdiction should they be released on bond.
20. Regarding the 2<sup>nd</sup> accused, I note that the allegations made against her concerning the repeated threats that she made to her family members which threats, it is alleged, culminate in the murder of the deceased persons in this case. This court cannot turn a blind eye to the claims made in the affidavits of the Investigating Officer and the deceased's kin in making a determination on whether or not to grant bail.
21. Furthermore, the prosecution also informed the court that there is hostility on the ground following the double murder and that the accused persons' security may be jeopardized if they are released on bond at this stage. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused did not rebut the averments made by the Investigating Officer regarding their criminal record.
22. Having regard to the findings and observations that I have made in this ruling, I am of the view that it will not be in the interest of justice to grant the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons bond at this stage of the proceedings.
23. As concerns the 2<sup>nd</sup> accused, it is not clear if the affidavit of Cliff Morema was served upon her Advocate for their attention and response.
24. Be that as it may, I will grant Counsel for the 2<sup>nd</sup> accused an opportunity to respond to the said affidavit before a final order can be made on her bond application.
25. In this regard, I direct the Probation Officer to prepare and file a pre-bail report in respect to the 2<sup>nd</sup> accused before the next mention date.
26. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 30<sup>TH</sup> DAY OF MAY 2023.**

**W. A. OKWANY**

**JUDGE**

