



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Sindeng & 4 others (Criminal Case 8 of 2020)
[2023] KEHC 21065 (KLR) (Crim) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 8 OF 2020**

K KIMONDO, J

JULY 31, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

DUNCAN ODHIAMBO SINDENG ALIAS DAN 1ST ACCUSED

JOHN MWANGI WANJIRU ALIAS JONTE 2ND ACCUSED

AARON MWARARI WANJIKU ALIAS MWARARI 3RD ACCUSED

JOHN MUNGAI WAITHERA ALIAS MUNGA 4TH ACCUSED

MOSES NGARI MWANGI ALIAS KABARIDI 5TH ACCUSED

RULING

1. The 3rd accused, Aaron Mwarari Wanjiku, brought a Notice of Motion dated November 21, 2022 seeking for bail pending trial. The application is supported by his affidavit sworn on August 25, 2022.
2. When the matter came up for hearing on May 22, 2023, learned counsel for all the other four accused persons supported the motion; and, equally applied for bail on reasonable bond terms.
3. The applications are contested by the State through replying affidavits sworn on September 14, 2020 and May 4, 2023.
4. On May 22, 2023, I heard further submissions from all the learned counsel for the accused and the Republic.
5. Learned counsel for the 3rd accused, Mr. Gituma, relied on Article 49 (1) (h) of *the Constitution*. He submitted that the accused person has a fixed abode; is not a flight risk; and, that there were no



- compelling reasons for denial of bail. I should point out that the pre-bail report states that the home of the 1st accused is barely 25 Kilometres from the Tanzanian border.
6. Ms. Odero, appearing for the 1st accused, also argued that her client had a fixed abode and would abide by any conditions set by the court.
 7. Learned counsel for the 2nd accused, Mr. Onyari, submitted that the prosecution had not placed sufficient material before the court to justify denial of bail. In particular, he argued that no basis was laid to show that the accused would interfere with State witnesses.
 8. Mr. Muchiri, counsel for the 4th and 5th accused persons, emphasized that the accused are still presumed innocent; and, that the overarching objective of bail is to ensure they attend trial. In his view, there are no compelling reasons for denial of bail. He made reference to the decision in [*James Kibet Chirchir v Republic* \(2022\) eKLR](#).
 9. Ms. Kigira, the learned Prosecution Counsel, relied on the replying affidavits above-mentioned. She submitted that the right to bail is not an absolute. She argued that in the present circumstances, bail was not deserved because the accused persons are flight risk; that their own lives would be in danger; that they were likely to interfere with witnesses or jeopardize their safety; and, that they may re-group with some accomplices who still remain at large.
 10. I take the following view of the matter. By dint of Article 50 (2) (a) of [*the Constitution*](#) the accused are presumed innocent. Further, under Article 49 (1) (h) as read together with section 123A (1) of the [*Criminal Procedure Code*](#), they are all entitled to bail unless there be compelling circumstances.
 11. With regard to the phrase compelling reasons, I rely on the decision by Gikonyo J in [*Republic v Joktan Mayende & 3 others*](#), High Court, Bungoma, Criminal Case 55 of 2009 [2012] eKLR.
 12. Additionally, paragraph 4.9 of the Bail and Bond Policy Guidelines provides:

In terms of substance, the primary factor considered by the Courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the Courts face since the promulgation of [*the Constitution*](#) of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences. ... the determination of whether there are compelling reasons that can justify the denial of bail should be made by evaluating whether or not the accused person will attend his or her trial....
 13. The accused persons face the grave charge of murder. The Information dated November 21, 2022 states that on the October 7, 2019 at Kipawa Estate Area, Njiru Sub-County, within Nairobi County jointly with others not before the court, murdered Isaac Ochieng Awuor.
 14. From the pre-bail reports filed in court on June 22, 2023 by the Probation Service in respect of each of the accused, the accused are “part of a group of youth that controls the sand and ballast business in the area. The community feared that their release on bail might prompt ravage (sic) attacks from the rival group”. There is no certainty of such outcome but the court is enjoined to safeguard the security of all the accused persons.
 15. In addition, the wife of the deceased opposed the release of the accused persons on bail. She has the right to make those representations under the [*Victim Protection Act*](#).
 16. In the replying affidavit sworn on May 4, 2023 by PC Michael Mbugua, he alleges that on the October 7, 2019, the accused persons brutally attacked the deceased, who later died on October 9, 2019. That soon after the incident, the accused persons and their accomplices went into hiding. The 1st accused



person was arrested on December 24, 2019, the 2nd accused on July 25, 2020 and the 3rd, 4th and 5th accused on July 15, 2022. According to the prosecution, this amounts to a compelling reason for denial of bail.

17. Some of the alleged perpetrators remain at large. Furthermore, the court has now had the benefit of the evidence of three witnesses who have testified in this case. I must however emphasize that the accused are still deemed innocent. But owing to the nature of the charge, and the current stage of the trial, the likelihood to abscond is heightened and the attendance of at the trial cannot be guaranteed.
18. The upshot is that bail is denied. The accused persons shall remain in custody until the conclusion of the trial. In the interests of justice, the hearing shall be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

The accused.

Ms. Odero for the 1st accused.

Mr. Onyari for the 2nd accused.

Mr. Muchiri holding brief Mr. Gituma for the 3rd accused.

Mr. Muchiri for the 4th accused.

Ms. Masaki for the 5th accused.

Ms Kigira & Ms. Gikonyo for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

