



**Republic v SNM; HKN (Subject) (Criminal Case E042 of 2022)  
[2023] KEHC 21150 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21150 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E042 OF 2022  
PM MULWA, J  
JULY 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SNM ..... ACCUSED**

**AND**

**HKN ..... SUBJECT**

**RULING**

1. The first accused person and the subject were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, in that the night of 30<sup>th</sup>-October 31, 2022 at Kimuchu Area, Thika West sub-county within Kiambu county jointly murdered David Wainaina Muriuki.
2. The charges having been read and particulars thereof explained to the accused persons, the same were denied and pleas of not guilty entered. Mr Ombengi counsel for the 1<sup>st</sup> accused and Ms Kimathi counsel for the subject applied to have the accused person and subject released on reasonable bail terms.
3. The state counsel Mr Gacharia did not oppose accused and subject being released on bond but urged the court to call for pre-bail reports. The court ordered pre-bail reports be availed by the probation officer as well as a report in respect of the subject by the children officer.
4. Pre-bail reports were filed in court February 13, 2023. The children officers report has never been filed to date.
5. In the prebail report respecting the 1<sup>st</sup> accused, she is described by her family members as a dangerous and an untrustworthy person and also a flight risk as she had planned to go to Saudi Arabia where she



- had been working as a domestic worker. And in any case the family had no security to deposit in court and the uncles were non-committal on being her surety/sureties.
6. The subject is son to the 1<sup>st</sup> accused person and was in secondary school before he was arrested. Equally the family stated in the prebail report of their inability and unwillingness to bail him out in the event bond was granted.
  7. In both cases the deceased's family contend that they live under fear and would rather the trial be concluded while the two suspects are in custody unless they are afforded witness protection services.
  8. Article 49(1)(h) of the *Constitution* gives every accused person a right to be released on reasonable bail terms unless there are compelling reasons.
  9. This right can only be limited where it is shown that there exist compelling reasons not to be released, and the prosecution is duty bound to inform the court whenever there exists any compelling reasons.
  10. The Bail and Bond Policy Guidelines lists the following factors to be considered when releasing an arrested person on bond/bail: -
    - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty
    - b. The strength of the prosecution case
    - c. Character and antecedents of the accused person
    - d. The failure of the accused person to observe bail or bond terms on previous occasions is a good ground for denying bail or bond
    - e. Likelihood of interfering with witnesses
    - f. The need to protect the victim or victims of the crime from the accused person
    - g. The relationship between the accused person and potential witnesses
    - h. Child offenders
      - i. The accused person is a flight risk
    - j. Whether the accused person is gainfully employed
    - k. Public order, peace or security.
    - l. Protection of the accused person
  11. One of the key considerations of the release of an accused on bail/ bond is his or her availability to attend the trial. The pre-bail reports advance uncontroverted averments that the accused and subject may not attend trial if granted bail as no family member is committed to undertake their supervision. The court is inclined to believe the assertions in the pre-bail reports.
  12. The conclusion is that there are demonstrated and emerging compelling reasons why the accused should not be admitted to bail/bond pending trial.
  13. Accordingly, the bail application by the accused and the subject is declined. They will remain in custody during trial unless the court otherwise directs.

**It is so ordered.**



**RULING delivered, dated and signed virtually at Kiambu this  
27<sup>th</sup> day of July, 2023.**

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**P.M. MULWA**

**JUDGE**

**In the Presence of:**

*Duale* – Court Assistant

*1<sup>st</sup> accused* - present

*Subject* - present

*Mr. Gacharia* for the state

*Mr. Ombengi* for 1<sup>st</sup> accused

*Ms. Kimathi* for subject

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