



**Republic v Macharia (Criminal Case E050 of 2021)
[2023] KEHC 21779 (KLR) (30 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E050 OF 2021
PM MULWA, J
AUGUST 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL NJOROGE MACHARIA ACCUSED

RULING

1. The accused herein Paul Njoroge Macharia has filed an application under the certificate of urgency seeking the review of the orders of this Honourable court issued on February 10, 2022, by Ngetich, J denying him bond. The accused had previously made a similar application for the review of the bond terms but the same was dismissed vide the court ruling of May 18, 2022. The ground for the dismissal was that the accused had failed to establish the change in circumstances previously denying him bond.
2. The accused was charged with the offence of Murder contrary to Section 203 as read with section 204 of the *Penal Code*. The particulars of the information are that the 29th day December, 2020 at Kingero area in Kabete Sub-County, Kiambu County, murdered Tom Kinanta Murunya.
3. At the hearing of the application Mr Mwangi counsel for the accused informed the court the family of the accused wished to pose security for accused if release on bond and that the accused was not a flight risk. Counsel further submitted the accused was a family man and the sole bread winner. That he would not interfere with the witnesses.
4. Mr Muriuki, the state counsel was not opposed to the application for review of the bond terms.
5. I have considered the application and have noted the accused was arraigned in court on October 8, 2021; he has been in remand at Industrial Area since his arrest. Only 3 witnesses have testified. The applicant/accused is supposed to demonstrate to the court that certain circumstances have changed that warrant the review of the bond terms previously issued.



6. In *Republic vs Francis Maina Wairimu* (2020) eKLR the court stated that: “In an application for review of the denial of bail the applicant is under a duty to convince the court that there had been a change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”
7. In the instant case, this court notes the circumstances of the case have changed, the prosecution is not opposed to the release of the accused on bond, and therefore there exists no compelling reasons to deny the accused bail. The accused has also demonstrated that he is not a flight risk.
8. In the circumstances therefore, this court finds that it is in the interest of justice and in appreciation of the accused constitutional rights as enshrined under Article 49(1)(h) of the *Constitution* that the accused be released on reasonable bail terms.
9. It is important to note that the bond terms imposed by the court should not in any way amount to the denial of the accused constitutional right to bail. The accused stated he has been in custody for 20 months. Taking into consideration the presumption of innocence of an accused person until proven guilty and the constitutional right to grant reasonable bail terms to the accused this court considers that the current application is ripe for the review of the court orders declining the accused bail.
10. The bail terms should be commensurate to the offence committed. In the circumstances thereof, this court is persuaded that it ought to review the court orders of February 10, 2022, and substitute with an order granting bond to the accused on the following terms:

The accused may be released on a bond of Kshs 500,000/= with a surety of a similar amount.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 30TH DAY OF AUGUST 2023.

.....
P.M. MULWA

JUDGE

In the presence of:

Duale – Court assistant

Mr. Muriuki - for the state

N/A - for the accused

Accused – present in court

