



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kimula alias Mwalimu (Criminal Case E014 of 2022)  
[2023] KEHC 22698 (KLR) (24 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22698 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL CASE E014 OF 2022  
TM MATHEKA, J  
AUGUST 24, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NICHOLAS KATUA KIMULA ALIAS MWALIMU ..... ACCUSED**

**RULING**

1. The accused is charged with murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). That on June 17, 2022 at Masalani Village , Kyale Sublocation Kiboko Location, Makindu Sub County he murdered Julius Kimula Kisulu.
2. Bond was objected to by the state on the ground that the accused was a flight risk.
3. It emerged that the accused person had moved from his home area to Loitokitok area and the probation office had not conducted a social inquiry from that area to establish his status.
4. I had noted that the mother was ready to stand surety for him and ensure that he attended court.
5. I sought for a further report from Probation After Care Service. It was filed on August 8, 2023. The state through Ms. Nyakibia requested to submit on the report, she submitted that in the latter report the persons who were interviewed did not know the true nature of the accused person.
6. That he had committed the offence in 2020, and had moved to Loitokitok for the sole purpose of evading arrest - and when he got there he created a new life for himself - hence the people there knew him as a good person - as he got himself a new home, new wife, children, new relationships, new alias where he became known as Mwalimu because of the tutoring services he was offering.
7. That the officer who arrested him, took 2 days to catch him, and upon arrest he attempted to escape, and is already facing charges in the subordinate court.



8. That the mother of the accused had feigned ignorance of his whereabouts when the police were looking for him.
9. Ms. Nyakibia expressed the view that the accused person was a very smart person who would easily beat the system - and could easily disappear from the radar of police, and the jurisdiction of the court; that the alleged offence was committed in a brutal manner and there is fear of witnesses being intimidated . That if the court was inclined to give bond - to do so with stringent terms including periodic reporting to the Investigating Officer.
10. In his response the accused (whose counsel was absent due to the boycott by members of the Law Society of Kenya who signed up to take murder briefs on pro bono. They accuse the office of the Chief Registrar Judiciary, of highhandedness in determining the manner in which their tokens will be paid. ) submitted that he had been living at Loitoktok for 3 years and those people knew him well; That there was no way one would pretend to be of good character for 3 years ; That his mother did not know his whereabouts when he moved to Kajiado and even when he was arrested she did not know his home and only visited him at Makindu Police Station. He submitted that he was ready to avail himself to court as and when required as he was innocent; That he has a very young family, he is the breadwinner and would like to pursue his college education.
11. I have carefully considered the further PBR - and how it impacts on whether /not the accused may be released on bond.  
  
I have also considered the submissions by the Prosecutor and the accused person. I am alive to the fact that the accused is innocent until proven guilty. However it is also the duty of the court to take steps to ensure that the accused person is present for the full course of the trial.
12. It is clearly evident that when the accused left home (what is described by probation after care service officer as his father's vast piece of land) he not established a home there and for the period he had been away - his mother had no idea of where he lived. She only came to know of his home after he was arrested for this offence and upon visiting him at Makindu Police Station.
  1. The accused also faces a charge of attempted escape from lawful custody in the subordinate court. The Swahili saying kosa si kosa, kosa ni kurudia kosa appears to apply in this case, where the accused person has created the impression that he is not afraid to do what it takes to obtain his freedom even if it means infringement of the law.
  2. It is not in dispute that he moved to an area near the border between Kenya and Tanzania where nobody knew him and he has established new relationships. The further report is devoid of any details of the relationship between the accused and the persons allegedly interviewed. Considering that it is outside the jurisdiction of the probation after care service officer, Makueni there is no evidence of how the interviews were conducted and how the identities of those alleged to have been interviewed were established.
  3. Pre Bail Reports/Social Inquiry Reports are very important reports in the criminal justice system and their integrity ought to be assured-In this case - one would not know how those who were interviewed were identified, how their identities were verified and whether it is the accused who gave out their contacts.
  4. Having stated that - I had pointed out that the mother of the accused had expressed willingness to avail him if released on bond - however - for three years she did not know where her son was until he was arrested- evidently they are not that close - and if he could disappear from home,



not show her his home how can he be trusted now not to disappear from her radar, and leave us with her to sort out his nonappearance?

5. The accused is clearly a flight risk, he is facing a charge to that end and though innocent until proven guilty, the risk of non-appearance for the court process is still high. This is a compelling reason to defer his bond terms.
6. Hence for now bond is denied - to be reviewed once the matter takes off for hearing or other reasonable ground .

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> AUGUST 2023**

.....

**MUMBUA T. MATHEKA**

**JUDGE**

CA Nelima

Ms Nyakibia for State

Accused present

