



REPUBLIC OF KENYA



**Republic v Onduso (Criminal Case E009 of 2023)
[2023] KEHC 22648 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E009 OF 2023
CM KARIUKI, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

FELIX KERONGO ONDUSO ACCUSED

RULING

1. The Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* 63 Laws of Kenya.
2. He pleaded not guilty and his Advocate applied for him to be released on bond/bail on reasonable terms.
3. The Prosecution opposed the application prompting the court to call for the Pre-bond/bail report prepared by the Probation office upon filing of the Report, aforesaid, the court invited the rivalling sides to canvass the application subject herein.
4. The defence contention is that the accused is entitled to be released on bond/bail as it is his constitutional right entrenched in the provision of Article 49 (1) of the *Constitution of Kenya*. That the only exception is availability on the side of the prosecution of compelling grounds to deny accused the bail/bond.
5. The Prosecution back its contention for denial of bail/bond on the content of the Pre Bail Report filed together with the Affidavit sworn by the Investigation Officer (IO).
6. According to the Investigation Officer's affidavit sworn on 17/7/2023 paragraphs 16 -20 of the bond/ bail application is opposed on the ground that the accused is a flight risk as after the incident he ran away and was arrested by mob in Nyeri and escorted to the police station.
7. His native home is unknown.



8. There is risk of releasing accused as the community members of the deceased are very bitter and infuriated by the killing of the victim. There is also threat of interference of the witness.
9. According to Pre Bail Report dated 12/6/2023, the accused had been charged with Criminal Case No.735/2020 in Nyahururu Law Courts for house breakings and stealing and after being bonded by paying cash Ksh. 10,000/=, he absconded and could not be traced thus case was withdrawn on 4/3/2022 as he remained at large.
10. The Probation Bail Report is negative on accused release on bond.
11. The defence does not rebut especially the fact that the accused absconded in Criminal case No. 735/2020 forcing the prosecution to withdraw it. There is no evidence of his native home. The accused is also under threat of being harmed by the community members of the victims family.
12. The purpose of the Bond is to enable the accused to assure court that he would abide by the terms of the bond and availability on attendance to court whenever he is required to avail himself.
13. The mentioned case above where he absconded provides a substantial ground of compelling reason for denial of bond pending trial. Though the bond is a constitutional right, compelling reason such as failure to avail himself to court whenever he is needed warrant the court to deny accused bond. Thus, the court make the order that the trial shall be conducted while he is in custody

Orders accordingly

DATE, SIGNED, AND DELIVERED AT OLKALOU ON THIS 28TH DAY OF SEPTEMBER 2023

CHARLES KARIUKI

JUDGE

