



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Stephen (Criminal Case E027 of 2023)
[2023] KEHC 22795 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E027 OF 2023
PM MULWA, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ALEX ISAIAH STEPHEN ACCUSED

RULING

1. The accused herein Alex Isaiah Stephen is charged with the information of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The Particulars are that on the night of July 20, 2023 at Wangige Market in Kabete Sub-County, Kiambu County, jointly with others not before the court murdered one Stephen Were.
2. On August 30, 2023, the accused took plea and pleaded not guilty to the charge of murder.
3. Ms Kerubo, counsel for the accused pleaded with the court to release the accused on reasonable bail terms.
4. Mr. Muriuki, the state counsel opposed the bail application on the basis of the affidavit of Pc Erick Langat, one of the investigating officers, sworn on August 29, 2023 wherein it was deponed that the accused is a Ugandan citizen with no identification documents nor travel documents to show he was legally in Kenya. That the accused has no family or fixed abode in Kenya.
5. In response to the affidavit, Ms. Kerubo argued that the prosecution had failed to establish there were compelling reasons to deny the accused bond and he was to be presumed innocent until proven guilty. She contended that the accused was working and lived with his family. That the fact that the accused is a foreigner did not mean he was to be denied bail. That the accused is ready and willing to abide by any bail conditions the court may set.



6. Article 49 (1)(h) of the Constitution guarantees an arrested person the right to be released on reasonable bail unless there are compelling reasons. The burden of proof is on the prosecution to prove that there are compelling reasons that will deny the accused bail.
7. In the instant case, the prosecution submitted that the accused is a flight risk as he is a Ugandan national with no fixed abode in Kenya. The prosecution also averred that the accused has no proper documentation and is therefore in Kenya illegally. And further that the release of an accused on bail is a constitutional right and only limited when there are compelling reasons proved by the prosecution.
8. The Kenya Judiciary Bail and Bond Policy Guidelines, March 2015 at p 25 sets out judicial policy on bail as follows:

The following procedures should apply to the bail hearing:

- a. The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - i. That the accused person is likely to fail to attend court proceedings; or
 - ii. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - iii. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - iv. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - v. That the accused person is likely to interfere with witnesses or evidence; or
 - vi. That the accused person is likely to endanger national security; or
 - vii. That it is in the public interest to detain the accused person in custody.
9. Having carefully considered the application for bond pending trial and the affidavit filed by the prosecution, I find the prosecution has failed to prove the existence of compelling reasons to deny the accused bond. The only issue raised by the prosecution is the lack of a fixed abode. Where an accused person's abode is not fixed, where he is released on bail pending trial the court should be able to put conditions/terms to ensure attendance.
10. I therefore grant the application for bail on the following terms:
 - i. The accused is granted bond of kshs 500,000/= with 2 Kenyan sureties of a similar amount.
 - ii. In addition, the accused is to provide details of parent or close kin to sign up as a contact person to ensure the accused person's whereabouts are known to the court.
 - iii. The accused is warned from leaving the jurisdiction of this court unless with the leave of the court.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 28TH DAY OF SEPTEMBER 2023.



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P.M. MULWA

JUDGE

In the presence of:

Kinyua/ Duale – Court assistants

Mr. Gacharia - for the State

Ms. Kerubo - for the Accused

Accused – present in court

