



REPUBLIC OF KENYA



**Republic v Wanderi (Criminal Case E001 of 2023)
[2023] KEHC 22644 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E001 OF 2023
AK NDUNG’U, J
SEPTEMBER 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHRISTOPHER NGUMI WANDERI ACCUSED

RULING

1. The Accused person in this case, Christopher Ngumi Wanderi is charged with murder contrary to sections 203 and 204 of the [Penal Code](#). It is alleged in the information dated February 13, 2023 that on 25th day of January 2023 at Munyu Area in Kieni East Sub-County within Nyeri County murdered Grace Wambui Mathenge.
2. On February 21, 2023, the Accused pleaded not guilty to the charge. The Republic has opposed bail by an affidavit dated February 22, 2023 sworn by one of the Investigating Officers Moss Kibet. The reasons advanced for opposing bail are-
 - i. That the Accused is likely to interfere with the prosecution witnesses as they are well known to the Accused and he is well aware of the said witnesses’ place of abode hence, there is fear of intimidation or interference with the witnesses.
 - ii. That the deceased’s family are victims in this matter and have been greatly impacted by the loss of their young daughter hence his release on bail would be prejudicial to them.
 - iii. That the Accused is likely to abscond court if granted bail since he ran away immediately after committing the offence on January 25, 2023 and only surrendered himself to the police on February 5, 2023 out of fear that members of the public who were looking for him were going to lynch him. His behavior thus shows a predisposition to escape the court’s jurisdiction.



- iv. The Accused has no fixed abode and his means of livelihood is unknown which increases the likelihood that he may abscond court if granted bail.
 - v. That the Accused is charged with an offence that carries a death sentence hence there is a probability of the Accused absconding if released on bail.
 - vi. That his release will disturb public order and undermine public peace and security since the situation in Munyu where the murder was carried out is still volatile and there is need to prevent potential revenge attacks on Accused.
 - vii. That there is high probability that the prosecution will secure a conviction due to overwhelming evidence that points to the guilt of the Accused therefore, if the Accused is released on bail, he may flee the jurisdiction of the court.
 - viii. That bond/ bail should be denied considering the unprovoked and violent manner in which the Accused caused the death of the deceased.
3. Counsel on record for the Accused person did not file a replying affidavit but argued the application for bail orally. She urged that despite indication that the Accused would encounter mob justice if released on bail, he is willing to relocate and members of the public have other things to do rather than following him to his new place. That he surrendered himself to the police therefore, he is not a flight risk.
 4. In opposing the application for bail, the State counsel argued that there is apprehension that the Accused will interfere with witnesses since he had a romantic relationship with the mother of the deceased who is a witness and that the offence was committed in presence of other relatives who have recorded statements as well. That the Accused know the witnesses and their place of abode hence there is fear that he will intimidate or interfere with them.
 5. It was contended that the Accused is a flight risk for he immediately fled the scene and only reappeared days after and surrendered to the police out of fear of being lynched by members of the public. That the offence is serious and sentence is harsh therefore, there is a likelihood that he will abscond court. Further, the Accused has no fixed abode and has little communal ties hence it will be impossible to locate him. Furthermore, his release will obstruct public order since the Accused surrendered himself to police in Nyeri for fear of being lynched by Munyu residents. That the pre-bail report indicates that Munyu is still volatile and it is almost certain that he will be attacked.
 6. In response to State's counsel argument. The Accused's counsel argued that the State counsel did not show any communication between the Accused and the witnesses and there was no evidence of threat or intimidation to the witnesses. That the Accused has a fixed place of abode at his parent's home which is in Munyu and which is well known by the Chief. On the issue of distracting peace and order, it is submitted that the Accused is willing to relocate and have someone who will stand surety for him and his family will be able to locate him. That the counsel has perused the witness statements and can tell that the prosecution has a weak case and Accused has not been proven guilty and it was just public opinion that the Accused committed the offence hence, there is no reason to deny the Accused bail.
 7. I have considered the respective averments and arguments by the parties. I have also perused the witness statements, documentary evidence and pre-bail report supplied by the prosecution to this court.
 8. Bail pending trial is now a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict,



must be reasonable. That right is enshrined in Article 49(1) (h) of the Constitution of Kenya, 2010 which states that every Accused person has a right-

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

9. “Compelling reason” is not defined in the Constitution or in any law that this court is aware of. The term is also not defined in Black’s Law Dictionary, Tenth Edition. However, the term “Compelling need” is defined there as –

“A need so great that irreparable harm or injustice would result if not met.”

A note following that definition states –

“Generally, courts decide whether a compelling need is present based on the unique facts of each case.”

10. Compelling reason therefore, in this court’s view, is a reason that must militate against granting the Accused bail, such as proven likelihood of him/her not attending court, interference with witnesses, harm to witnesses or to himself/herself, and the like. The important word here is proven. It is not just a matter for the discretion of the court. He who seeks to deny an Accused person his constitutional right to bail pending trial must therefore place evidence before the court as would establish, on balance, the compelling reason urged. It is not enough to merely allege without evidence.

11. The reasons advanced by the prosecution for denial of bail are;

- i. Interference and intimidation of witnesses.
- ii. The Accused is a flight risk.
- iii. That his release will disturb public peace and order.
- iv. That he is facing a serious offence with a harsh sentence.
- v. That the prosecution has overwhelming evidence that points to his guilt.

12. The strength of the prosecution’s case and the seriousness of the offence and the sentence are recognised in the Bail and Bond Policy Guidelines 2015 as key considerations in determining issues of bail/bond. Am quick to add, however, that this is an area where the court must tread with caution. The court must not lose sight of the fact that Article 49(1)(h) grants an Accused the right to bail irrespective of the seriousness and the nature of the offence. On this, I agree with the court in the decision in *R V Mwangi* [2016] eKLR where the court held that: -

“Bail cannot be refused simply because the accused has been charged with a very serious offence but the seriousness of the offence can be taken into consideration as a factor in determining if one of the ground for refusing bail exists.”

13. On the question of strength of the prosecution’s case, again, the constitutional edict at Article 50(2) (a) of the constitution on presumption of innocence comes into play. Thus, the strength of the prosecution’s case in isolation cannot alone constitute a compelling reason to deny bail.
14. Interference with witnesses and disturbance of public peace and order if proved on balance, are compelling reasons to deny an Accused person bail, one because interference with witnesses will be



- subversion of justice, and two, he might suffer harm if released to the community which is not ready to accept him back.
15. Flight risk, likelihood of interference with witnesses and disturbance of public peace and order if proved on balance, are compelling reasons to deny an Accused person bail, one because he/she will not turn up for the trial as and when required, two because interference with witnesses will be subversion of justice, and three, he might suffer harm if released to the community which is not ready to accept him back.
 16. Have those allegations been proved on balance in the present case? The prosecution has maintained that the Accused is a flight risk on the following grounds-
 - i. That he has no fixed abode.
 - ii. That he disappeared immediately after the commission of the crime on January 25, 2023 and was at large until February 5, 2023 when he surrendered himself to the police.
 17. As for the first reason, it is really within the realm of an Accused person, in response, to provide adequate details of his permanent abode if he has one, so that the same can be verified. The Accused's counsel told the court that the Accused has a permanent place of abode at his mother's home at Munyu. The pre-bail report however stated that his parents who reside in Munyu, though willing to stand surety for him, expressed fear of destruction of their home by the community who threatened to do so if the Accused is released hence, they feared to bail him out.
 18. On the part of the Accused, his counsel argued that to avert revenge from the community, the Accused is willing to relocate to another place. It is noteworthy, however, that counsel did not state the locality or the village that the Accused is relocating to or even the nearest trading centre. My take on this issue is that the Accused has failed to give full and proper details of his fixed abode and in the event of failing to attend court while out on bail, it would indeed be very difficult for the police to trace and apprehend him. That would entirely sabotage his trial.
 19. Furthermore, the Accused was arrested more than 10 days after the alleged offence was committed. He surrendered himself to the police at Nyeri Police Station which is far away from the scene of crime. It appears that immediately after the offence was committed, the Accused fled the area and the allegation by the prosecution that he only surrendered to the police to avoid lynching gains credence.
 20. The other compelling reason is the hostility from the community who have threatened to harm him or torch his parents' home if released on bail. According to the pre-bail report dated June 13, 2023, the community is still mad. The report suggested that he be granted bail at a later stage to allow the raw emotions that are still evident from the residents at the local area to subside. The report further indicated that the Accused is aware of the supposed threats to his life and his family's property.
 21. As to the alleged interference and intimidation of witnesses, the perusal of the witness statements reveals that the Accused and the deceased's mother were estranged lovers. On the day the deceased was killed, the Accused had assaulted the deceased's mother and had threatened to kill someone on that day. The deceased's mother is a witness in this case. The deceased's uncle who allegedly saw the Accused fleeing from the scene of crime and one Hassan who is well known to the Accused and who witnessed the Accused assaulting the deceased's mother are witnesses in this case.
 22. Without in any way prejudicing the presumption of innocence that the Accused enjoys under the law, I am persuaded on balance by the material now before the court that if released on bail, the Accused will be a clear and present danger to Susan Muthoni Kamina the estranged lover and the deceased's mother and very possibly to other witnesses as well.



23. From the foregoing, I find that the Accused is a flight risk and his release on bail would lead to disturbance of public peace and order as well as interfere with witnesses. These are compelling reasons for denial of bail.
24. The prosecution has established compelling reasons for denial of bail. The application for bail fails and is dismissed.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 27TH DAY OF SEPTEMBER 2023.

A.K. NDUNG’U

JUDGE

