



**Republic v Kandie alias Fano (Criminal Case E011 of 2023)
[2023] KEHC 26070 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E011 OF 2023
RB NGETICH, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FANUEL KANDIE ALIAS FANO ACCUSED

RULING

1. The accused Fanuel Kandie Alias Fano has been charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that on the 24th day of September, 2022 at K2 Choma Base Koriema Club, Koriema Sub-location, Marigat Sub- County within Baringo County the accused murdered Benard Kiprono Sang alias Ainamoi super star.
2. The charge and its full particulars were read over and explained to the accused on the 3rd July, 2023. He he denied the charge and a plea of not guilty was entered. The state counsel ms Ratemo opposed the accused being granted bond on ground that he is a flight risk. She stated that he was arrested on the 7th June, 2023 after evading arrest from 24th September,2022 being the date that he was alleged to have assaulted the deceased and that if released, he may not attend court. The prosecution placed in the file an affidavit by the investigations officer sworn on the 3rd July,2023 by no 76478 Sgt. Joshua Tobolei in support of the allegation that accused is a flight risk.
3. The Investigating Officer aver that on the 24th September 2022, the respondent assaulted one Benard Kiprono Sang alias Ainamoi super star' causing serious injuries that led to his death on the 27th September 2022. That the accused escaped to unknown destination immediately after committing the offence on the 24th September 2022. He was traced and arrested on the 7th June, 2023 at Marigat Township after a vigorous and long manhunt.
4. He further avers that the accused has also been charged for the offence of robbery with violence before Kabarnet law courts no 2 *vide* Marigat police station case file CR.795/052/2021, CF. E711/2021 and



was released on bond but he never appeared in court as required of him hence a warrant of arrest was issued against him.

5. That the accused is a violent person and he has injured police officers during times of arrest and he was placed as a dangerous and wanted person *vide* Dci Marigat signal ref. CIDISEC/4/6/VOL.1/4 dated 27th April, 2023.
6. That in the event the accused is granted bail and fail to show up in court, tracing him will be a problem and the purpose of this affidavit is to inform the court that if the accused is granted bail, he is a flight risk and the offence committed by the accused is serious in nature.
7. On the 24th October,2023, the defence counsel ms Kogo filed an application dated 24th October,2023 seeking the following orders:-
 - i. Spent.
 - ii. That this Honourable Court be pleased to admit the Accused/Applicant to bail/ bond and that the Accused/ Applicant be released on bond and on such reasonable terms that this Honourable Court may deem expedient.
 - iii. That the costs of this application be in the cause.
 - iv. The application is premised on the grounds that:-
8. Grounds of the application are that on 3rd July, 2023 the Accused/ Applicant was charged with the offence of murder contrary to Section 203 read with Section 204 of the *Penal Code* Cap 63 Laws of Kenya. on 3rd July, 2023 the Accused/ Applicant pleaded not guilty to the offence aforementioned.
9. That on the said date, the Accused/ Applicant was not admitted to bond/bail for reasons stated on record and more particularly on circumstances prevailing *vide* an affidavit sworn by Sgt Joshua Tobolei on 3rd July, 2023 and filed by the Prosecution on the same date.
10. That currently the circumstances have changed and there are no compelling reasons prevailing to warrant refusal or denial to grant bail/bond pending the trial of the Accused/ Applicant hence this application; and once granted bond, accused is willing and ready to abide by the terms and conditions that this Honourable Court may deem fit to Order.
11. The application is supported by an affidavit sworn by the accused on 24th October 2023.He avers that on the 3rd July, 2023, he was charged with the offence of murder contrary to Section 203 and 204 of the *Penal Code* Cap 63 Laws of Kenya. He states that he pleaded not guilty and on the said date, his advocate on record MsKogo, upon noting the contents of the affidavit sworn by Sgt. Joshua Tobolei did not apply to the Honourable court for his release on bond pending trial.
12. That the Honourable court considered the reasons stated in the said probation Report as to why his application should not be granted and his application was disallowed based on the said reasons.
13. He proceeds to state that however, the Honourable Judge directed the application for bail may be revisited and/or reviewed if the circumstances stated in the report will have changed.
14. That the circumstances as where then stated in the affidavit of Sgt. Joshua Tobolei are not true as he has a fixed abode and also no charges were preferred against him for either assault or resisting arrest. That his wife, father and other members of his family are willing to stand surety for him if the court grants his request for bail/bond.



15. That in support of his application, he wishes to seek the authority of this Honourable court that a probation officer or such other competent officer of this Honourable court be mandated to make inquiries and file a report in court within a reasonable court time to determine his instant application.
16. The application dated 24th October, 2023, was placed before me on the 24th October, 2023. I directed that another pre-bail report be filed to establish the current situation on the ground. The Pre-bail report was filed on the 20th November, 2023. The report reveals that the accused absconded before when he was placed on probation. The accused person indicated that he has been able to identify someone who will stand surety if court grants him.
17. The victim's father, uncle and deceased's friend were all opposed to the accused person being released on bond. They indicated that the accused person is a flight risk in that he went into hiding for a period over a year. They added that the accused person has never initiated any process of sending his elders to them to say a word of sorry. The deceased's friend indicated that the public at large is happy that the accused person was arrested and their prayers are the accused person should not be released since they have a feeling he might go into hiding.
18. The accused's elder brother, wife and the mother all prayed for the accused person to be released on bond. They added that they have found someone who will stand surety for him. The accused's wife indicated that upon the arrest of the accused, she has undergone lots of challenges both financial and emotional. Her main prayer is the accused person be released on bond to assist her in family duties.
19. The local administration together with representative from Marigat DCI are opposed to the accused person being released on bond stating that the accused's chance of jumping bail is very high. The DCI representative stated that the accused person has a history of jumping bail and chances of him jumping bond are very high.
20. The Probation Officer states that from the social inquiry they find that the accused has a history of jumping bail and the person the accused has identified as surety is the same person who stood surety for him in court file number E711/2021. That the accused never appeared in court for a while and the surety's land was almost sold. That going by the negative sentiments from the local administration, deceased family and the fact that the accused has a history of jumping bail, they do recommend the accused person be denied bond. However, this is subject to courts discretions.

Determination

21. Bail is a constitutional right of every citizen. Article 49(1)(h) of the *Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case unless there are compelling reasons.
22. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provides as follows:
 - (1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - a. the nature or seriousness of the offence;
 - b. the character, antecedents, associations and community ties of the accused person;
 - c. the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;



- d. the strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody; should be kept in custody for his own protection.
23. And, under the [Bail and Bond Policy Guidelines](#), it is restated as a general guideline in Paragraph 4.9 that:
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the [Constitution](#) of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
24. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:
- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - b. The strength of the prosecution case.
 - c. The character and antecedents of the accused person.
 - d. The failure of the accused person to observe bail or bond terms.
 - e. The likelihood of interfering with witnesses.
 - f. The need to protect the victim or victims of the crime.
 - g. The relationship between the accused person and the potential witnesses.
 - h. The best interest of child offenders.
 - i. The accused person is a flight risk.
 - j. Whether the accused person is gainfully employed.
 - k. Public order, peace and security.
 - l. Protection of the accused persons.
25. The overarching objective of bail/bond is to ensure the accused attends his trial. Relevant matters to be considered by the court include: the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond, and, the safety of the accused.
26. From prebail report, accused was charged in criminal case number E711/2021 but he absconded. In view of accused’s history of failing to comply with bond terms and local administration and investigations officer’s sentiments, I find that there are compelling reasons to deny accused bond.

Final orders

27.

1. Application dated 24th October 2023 is hereby dismissed.



2. Accused to remain in custody pending hearing and determination of this suit.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 30TH
DAY OF NOVEMBER, 2023.**

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Momanyi & Mr. Elvis – Court Assistants.

Ms Kogo for accused.

Accused present.

Mr. Mongare for State.

