



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Gichuru (Criminal Case E037 of 2022)
[2023] KEHC 26901 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E037 OF 2022
DO CHEPKWONY, J
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON MIRINGU GICHURU ACCUSED

RULING

1. The Accused, Simon Miringu Gichuru is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He is alleged to have murdered his wife, with whom they were blessed with three(3) children, now aged 16 years, 11 years and 8 years old respectively, the accused applied to be released on bond/bail pending trial. In consideration of the said application, the pre-bail and Children's Officer's Report, Hon. Justice Kasango (as she then was) declined to grant the accused release on bond and directed that he be remanded in custody pending his trial on the ground that because there is one child who was to testify in the murder case, there was need to ensure his evidence is not interfered with.
2. This trial commenced on 23rd August, 2023 whereby three (3) witnesses who are the three children of the deceased and the accused testified. After this, the counsel for the accused person renewed their application for the accused to be released on bond since there was no longer a threat to the children and neither would he interfere with their evidence. His counsel contended that the accused was ready to abide by any condition that would be granted by the court. It was also submitted that he has become sickly.
3. This application has been opposed by the prosecution's counsel, M/S Ngesa on the ground cited at Paragraph 9 of the Replying Affidavit sworn by the Investigating Officer, A. C. Rogers Kangogo on 12th June, 2023 and written submissions filed on 26th June, 2023 that there has been no change of circumstances to warrant the court review the accused person's bond/bail status. She also stated that four (4) of the nine (9) remaining witnesses reside in the neighbourhood of the same plot where the



accused and deceased resided and there was a likelihood of the accused and or his agents reaching and interfering with them. And for his medical condition, counsel of the State has urged that medical report has not been availed to support the claim.

4. Mr. Kamuiru, counsel for the accused pointed out that the prosecution's court was misleading the court and was not being candid with this court's proceedings. He went on to state that the prosecution had failed to discharge the burden of confirming that the accused was likely to interfere with the prosecution's witness. That in any event, King'ero Police Station is stone throw away from where the accused lives so that if he interferes with the witnesses, a report can be made against him. According to counsel, they abandoned the application on a legitimate expectation that the accused would be released on bond once the minors testified, and which has happened.
5. Having listened to both counsel for the parties on whether or not to allow the accused person's application to be released on bond/bail pending trial, I have read through the court record, ruling delivered by Hon. Justice Kasango (as she then was) delivered on 1st day of December, 2022 and considered the relevant provision of the law with regard to bond and bail for an accused person. It is an undisputed fact that the accused person has a constitutional right to be released on bail on reasonable terms unless it is shown that there exists compelling reasons as to why the same should not be granted. (Article 49(1)(h) of the *Constitution*, 2010). Section 123 of the *Criminal Procedure Code* provides the circumstances to be considered for one to be released on bond/bail.
6. It is these provisions of the law that the accused's application is premised. The main reason advanced in objection to the accused person's release on bond/bail is that the accused is likely to be reached and interfered with by four (4) out of nine (9) remaining witnesses since they live in the same plot where he and his wife lived. She also argues that there has been a change in circumstances to warrant the application for the accused to be released on bond.
7. It is my considered view that even though the prosecution through the Investigating Officer have claimed that the accused is likely to interfere with the four(4) out of nine(9) witnesses, no evidence has been advanced and or demonstrated to convince this court that indeed the accused is likely to interfere with witnesses. It is not enough to just claim that the witnesses will be interfered with. This claim must be sufficiently demonstrated with cogent evidence.
8. And upon reading through the ruling delivered by Justice Kasango delivered on 1st December, 2022, it is clear that the accused was denied release on bond until a child who was lined up to testify in the matter was called to do so. Justice Kasango had this to say:-

“[6]. The interests, therefore of the accused's children and more particularly the one who shall testify in the murder trial ranks higher than the interest of the accused. There is in this scenario a high probability that the accused who is that child's father may interfere with that child to influence the evidence he will give. Interference of the prosecution's witnesses undermines the criminal justice system and dents the integrity of the criminal process”.

9. Clearly, at this stage, the three (3) children and not one have testified, hence there has been a change of circumstances, contrary to what the prosecution wants this court to believe and deny the accused release on bond.



10. Justice Lessit articulated the issue of review of bond terms in the case of *Harish Nawjee & Another -vs- Republic* [2020]eKLR, Criminal Case No.545 of 2020 as follows:-

“Fourthly, the accused has a right to seek review of bond terms from the trial court or High Court or Appeal court. The application should be made before the trial court which granted the bond. If, however the accused is still aggrieved by the decision of the trial court, he can still approach the High Court for relief”.

11. In view of the aforementioned findings in this case, this court finds the application for review of the orders of this court where he was denied release on bond be and is hereby allowed with the following orders issuing:-

- a. The accused to be released on a bond of Kshs.500,000.00 with one surety of a similar amount.
- b. In the alternative, the accused be released on a cash bail of Kshs.300,000.00.
- c. The accused to provide particulars of a contact persons(s).
- d. The accused is fore-warned against interfering, threatening, intimidating and or acting in any manner that would prejudice the witnesses in this case.
- e. Failure to comply with any of the above conditions will result into his arrest and or cancellation of the said terms.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF NOVEMBER , 2023.

D. O. CHEPKWONY

JUDGE

M/S Ngesa counsel for State

Mr. Kamuiru counsel for the accused person

Accused – present

Court Assistant - Martin

