



**Republic v Munene & another (Criminal Case E009 of 2023)
[2023] KEHC 25906 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E009 OF 2023
AK NDUNG’U, J
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

TIMOTHY MUNENE 1ST ACCUSED

GEORGE MURIUKI 2ND ACCUSED

RULING

1. The Accused persons in this case, Timothy Munene and George Muriuki are charged with murder contrary to sections 203 and 204 of the [Penal Code](#). It is alleged in the information dated 15/09/2023 that on 25/08/2023 at Gichagi village in Buuri West Sub-County within Meru County jointly murdered Edward Kaimenyi.
2. On 11/10/2023, the 2nd Accused pleaded not guilty to the charge. The 1st Accused was found not fit to plead and the court ordered for a comprehensive report to be filed by the doctor before he takes plea. This ruling therefore pertains to the 2nd Accused bail application.
3. The Republic opposed bail by an affidavit dated 23/10/2023 sworn by one of the Investigating Officers James Mugo. The reasons advanced for opposing bail are-
 - i. That there is a likelihood of interference and intimidation of prosecution witnesses who include 2nd Accused’s minor niece who witnessed the assault on the deceased, his relatives and neighbors who are prosecution’s witnesses. That the 2nd Accused know their place of abode hence he might interfere directly or indirectly with the said witnesses.
 - ii. That the minor witness is considered vulnerable witness particularly due to her young age and there is a likelihood she will be traumatized if she sees the 2nd Accused.



- iii. That he is facing an offence that carries a death sentence hence there is a probability of him absconding if released on bond.
 - iv. That the prosecution has overwhelming evidence that points to the guilt of the 2nd Accused hence when released on bail he may flee in fear of being sentenced.
4. In response to the prosecution application opposing bail, Ms. Nyakundi, counsel for the 2nd Accused filed a response dated 01/11/2023. She argued that the Constitution assumes the 2nd Accused Person innocent until proven guilty; that no documentary evidence has been produced to show that the 2nd Accused has interfered or even tried to interfere with the witnesses either by himself or through proxies; that the fact that the 2nd Accused know the witnesses is not a ground enough to deny him bail; the prosecution has not proffered any proof that the 2nd Accused has tried to escape from custody or interfered with the investigations; that there are no compelling reasons to deny the 2nd Accused bail; the 2nd Accused has a fixed place of abode and he has five children and a wife who depends on him; and that he is willing and ready to comply with terms and conditions of bail/bond.
5. The application was argued orally. I have considered the rival arguments proffered by the Parties. I have also considered the pre-bail report which is favourable to the 2nd Accused Person.
6. 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. See 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.”
7. “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.”
8. 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.
9. The reasons advanced by the prosecution for denial of bail are;
- i. Interference and intimidation of witnesses.
 - ii. That he is facing a serious offence with a harsh sentence.
 - iii. That the prosecution has overwhelming evidence that points to his guilt.



10. The third reason can be dismissed right away. The perceived strength of the prosecution case in my view is not a compelling reason to deny an Accused Person his constitutional right to bail. The Accused has a constitutional and legal right to the presumption of innocence until and unless proven guilty to the required standard.
11. The same applies to the second reason. The perceived seriousness of the offence and the sentence in my view can never be a compelling reason to deny an Accused Person the constitutional right to bail. Though the *Judiciary Bond and Bail Policy* 2015 lists the seriousness of the offence as a tenet for consideration, 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. In *R v Mwangi* [2016] eKLR 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.”
12. Interference with witnesses on a balance, is a compelling reason to deny an Accused Person bail because interference with witnesses will be subversion of justice. Evidence must however be adduced in support of such interference or likelihood of interference.
13. In the present case, have those allegations been proved on balance? The prosecution has stated that there is a minor witness aged 12 years who witnessed the assault on the Deceased. It is also stated that other witnesses are family members and 2nd Accused’s neighbours whom he might interfere with. The prosecution has not proffered any proof that the 2nd Accused has tried either directly or through proxies to interfere with the said witnesses. None of the prosecution witnesses has come forward to state that the 2nd Accused has either directly or indirectly approached them in a manner that can be said that he was attempting to interfere with the witnesses.
14. However, it is not lost on the court that there is minor who is stated to have witnessed the murder of the deceased and therefore if the 2nd Accused is released, there is a likelihood that she might be traumatised. It is not however indicated whether the minor lives in the same compound or neighbourhood with the 2nd Accused person. However, it is stated that the minor is a niece to the 2nd Accused.
15. My view therefore is that the presence of the 2nd Accused might intimidate the minor. She might be afraid to testify freely knowing the 2nd Accused is within her vicinity. I agree with the holding of the court in *Republic v Gibson Kiplangat Bett* [2022] eKLR. Where the court while denying the Accused bail stated;

“The circumstances of this case are; that one of the witnesses is a minor and his mother, and two others are neighbours who live close to the home of the accused. It is stated that the heinous act of murder happened in the presence, *inter alia* of the minor and the mother. In these circumstances, likelihood of interference of witnesses, directly or indirectly, is not far-fetched. The minor, who is a witness in this case would be intimidated by the presence of the Accused.”
16. In the circumstances of this case, am satisfied that a compelling reason exists for denial of bail to the 2nd Accused, at least at this stage. I would direct that the question of bail be revisited once the minor testifies.
17. With the result that the application for bail is denied.



DATED SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF NOVEMBER 2023

A.K. NDUNG'U

JUDGE

