



REPUBLIC OF KENYA



**Republic v Kerubo & 2 others (Criminal Case E082 of 2022)
[2023] KEHC 26755 (KLR) (Crim) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E082 OF 2022**

**K KIMONDO, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

TERESA MASESE KERUBO 1ST ACCUSED

PC KENNEDY MURIMI KINYUA 2ND ACCUSED

STANLEY COLLINS MUTHIKE THIAKA 3RD ACCUSED

RULING

1. The three accused persons pray for bail pending trial. The application is vehemently opposed by the Republic through a replying affidavit sworn by Police Constable Cecilia Mumbi on December 6, 2023.
2. Learned counsel for the 1st accused, Mr. Osewe, submitted that the affidavit was mere conjecture and full of falsehoods. He contended that there is no evidence that the 1st accused will interfere with the evidence of her children. In fact, one of them who is aged 17 has visited her in remand prison.
3. He stated that the 1st accused has undertaken to relocate from the *locus in quo*. He argued that she is sickly; and, that since the investigations have now closed, there are no compelling reasons for denial of bail.
4. Learned counsel for the 2nd accused, Mr. Omenke, relied on Articles 49 (1) (h) and 50 of the [Constitution](#). He argued that the accused are deemed innocent and are entitled to bail unless there be compelling reasons. He contended that in the instant case, the prosecution failed to demonstrate such evidence.



5. Learned counsel for the 3rd accused, Mr. Peter Raymond, associated himself fully with the submissions made by his colleagues.
6. Ms. Kigira, the learned Prosecution Counsel relied on the above-mentioned affidavit. She cited Article 24 of the [Constitution](#) for the proposition that the right to bail can be limited. She argued that the accused persons interfered with the minors who are key witnesses in the trial. She urged the court to consider the best interests of the children.
7. Learned Prosecution Counsel also argued that the accused were flight-risks. For instance, the 1st accused has a travel passport while the 2nd accused is an interdicted police officer. The 2nd and 3rd accused persons also went underground. Finally, she submitted that there is no medical evidence showing that the 1st accused is ailing.
8. Learned counsel Mrs Arasa, watching brief for the family of the deceased, associated herself fully with the submissions made by Ms Kigira.
9. I take the following view of the matter. The accused face the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the night of 12th October 2023 at Mihango Kibiku area in Kayole Sub-County within Nairobi County jointly with others not before the court murdered Evans Bikundo Moracha.
10. Those remain allegations; and all the accused are presumed innocent at this moment. Under Article 49 (1) (h) of the [Constitution](#), as read together with section 123 A (1) of the [Criminal Procedure Code](#), they are entitled to bail unless there be compelling circumstances.
11. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in [Republic v Joktan Mayende & 3 others](#), High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the Black's Law Dictionary 7th Edition. And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the [Constitution](#).

12. The overarching objective of bail is to ensure the accused attends trial. See [Michael Juma Oyamo & another v Republic](#), Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR; [Muraguri v Republic](#) [1989] KLR 181; [R v Fredrick ole Leliman & 4 others](#), Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
13. In addition, the [Victim Protection Act, 2014](#) now requires that the views of the victim's family be considered at this stage. As observed earlier, the family of the deceased opposed the release of the accused on bail.
14. When I juxtapose those principles against the facts here, I find further as follows. The deceased was the husband of the 1st accused. They had three children aged 17, 14 and 12 years. Two of the younger children are lined up to testify at the trial. It would be simplistic to say that the minors will be beyond the reach or influence of the 1st accused merely because she has recorded a statement; or, because she will relocate from the matrimonial house.
15. From the affidavit that has not been controverted at the moment, the 1st and 2nd accused person had a relationship. Again, that remains an allegation. But I have taken into account that the 2nd accused is a



police officer under interdiction. It is also alleged that the 2nd and 3rd accused persons went into hiding after the incident.

16. The Republic has filed a bundle of witness statements in court. It bears repeating that these are bare statements for now as the evidence has not been tested; and, fundamentally, that the accused are still deemed innocent.
17. Upon review of all the materials before the court, I find that the likelihood of interference with the witnesses, particularly the two younger children is not farfetched. True, their statements have been taken, but they are as yet to take to the stand. I also find that in view of the nature of the charge and the current stage of the trial, there is a real risk that all the accused persons may abscond.
18. Those are strong and compelling reasons for denial of bail. However, the court must strike a delicate balance that protects the rights of the accused but also ensures that the course of justice is not frustrated.
19. Bail is accordingly denied. All the accused will remain in custody until the conclusion of the trial. To further secure the rights of the accused, and in the interests of justice, I direct that that this trial shall be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2023.

KANYI KIMONDO

JUDGE

Ruling Read Virtually In Microsoft Teams In The Presence Of-
The Accused.

Mr. Osewe For The 1st Accused.

Mr. Omenke For The 2nd Accused.

Mr. P. Raymond For The 3rd Accused.

Ms. Njoroge For The Republic Instructed By The Office Of The Director Of Public
Prosecutions.

Mrs. Arasa Watching Brief For The Victim's Family.

Mr. E. Ombuna, Court Assistant.

