



**Republic v Makokha (Criminal Case E043 of 2023)
[2023] KEHC 26507 (KLR) (Crim) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26507 (KLR)

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

**CRIMINAL
CRIMINAL CASE E043 OF 2023**

**K KIMONDO, J
DECEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER KAKAI MAKOKHA ACCUSED

RULING

1. The accused prays for bail pending his trial.
2. The application is opposed by the Republic through a replying affidavit sworn by the investigating officer, Police Constable Amos Ndonyi on 14th July 2023. I should add that the accused has filed a replying affidavit 2nd December 2023 countering the conclusions by the investigating officer.
3. On 7th December 2023, I heard further submissions from all the learned counsel for the accused and the Republic.
4. Learned counsel for accused, Ms. Ng'ang'a, emphasized that the accused is deemed innocent; and, that the burden of proof never shifts to the accused. She relied on article 50 (2) (a) of the Constitution and *Woolmington v DPP* [1935] AC 462. She submitted that there is no firm evidence showing that the accused is a flight risk; and, that there are no compelling reasons for denial of bail.
5. Ms. Gikonyo, the learned Prosecution Counsel, relied on the affidavit of the investigating officer above-mentioned. It is deposed that the accused and the deceased are first cousins which increases the risk of interference with witnesses. She submitted that the right to bail is not an absolute. She argued that the accused is a flight-risk because the accused is a casual employee with no fixed abode; and, his wife has since relocated.



6. I take the following view of the matter. The accused faces the grave charge of murder. The Information dated 11th July 2023 states that on the 11th May 2023 at Mlango Kubwa area in Starehe Sub-County within Nairobi County, murdered Joseph Murunga Mdongo alias Jose.
7. However, and by dint of article 50 (2) (a) of the Constitution, he still presumed innocent. Further, under article 49 (1) (h) as read together with section 123A (1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.
8. 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.
9. 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.
10. It is true that the accused is a casual worker and was residing in rented premises at Mlango Kubwa. That by itself does not negate his right to bail. The prosecution contends that some of the witnesses are neighbours of the accused. Again that can be remedied by a relocation order. I note that the accused has in fact offered to relocate and live with his uncle in Mlolongo.
11. But what is a little more disconcerting is that some key witnesses are relatives of the accused. They include his wife (D2). It also flows naturally from the fact that the deceased was his first cousin; the locus in quo; and, the circumstances surrounding this incident. I thus find that there is a real likelihood of interference with witnesses. That is a compelling reason for denial of bail.
12. The upshot is that bail is denied. In the interests of justice, the hearing shall be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

The accused.

Ms. Ng'ang'a for the accused.

Ms. Njoroge for the Republic instructed by the Office of the Director of Public Prosecutions.

