



REPUBLIC OF KENYA



**Maina v Republic (Criminal Revision E016 of 2021)
[2022] KEHC 3143 (KLR) (Crim) (28 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 3143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CRIMINAL
CRIMINAL REVISION E016 OF 2021
JM BWONWONG'A, J
MARCH 28, 2022**

BETWEEN

HUSSEIN CHEMWOR MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

The case for the applicant

1. Pursuant to the provisions of section 124 of the *Criminal Procedure Code* and articles 20 (3) (4), 21 (1), 22 (3) (4), 49 (1) (h) and 50 (2) (a) of *the Constitution* of Kenya, counsel for the applicant (Messrs Omenge Andeje & Co Advocates) filed an application for bail pending trial of the accused on a charge of murder, in which they sought the following orders.
 1. Spent
 2. An order to grant bail/bond and in the alternative cash bail to the applicant pending his trial on a charge of murder.
2. The application is based six grounds that are set out on the face of the notice of motion dated February 8, 2022, with the major grounds being the following. The offence of murder is bailable under *the Constitution* of Kenya. The applicant has an unqualified right to be released on reasonable bail/bond terms or conditions
3. The applicant has been sick and risks to contract infectious diseases. The applicant is a Kenyan citizen by birth and has relatives both in his immediate family and in the extended family.
4. The said application is also supported by 13 paragraphs supporting affidavit; whose major averments are as follows.



5. The applicant has deponed to matters of law which the court is entitled to take judicial notice of, such as the presumption of innocence in terms of article 50 (2) (a) of the 2010 Constitution of Kenya. The applicant has also deponed to the same matters that appear in his notice of motion as grounds in support of the application; which I hereby decline to reproduce.

The case for the respondent

6. The respondent through the investigating officer (No. 87935 Cpl Luke Rotich) has filed a 13 paragraphs affidavit in opposition to the application; whose major averments are as follows. The accused and the deceased were brothers. And they were living as neighbours at Soweto in Kayole estate in Nairobi. The accused resisted arrest and threatened police officers while armed with a knife, forcing one officer to shoot him in the leg in a bid to subdue him.
7. Furthermore, the accused still managed to flee from the scene and from the entire Soweto neighbourhood. The conduct of the accused fleeing from the scene of crime to a different location shows that the accused is a flight risk.
8. The accused is not gainfully employed and if released on bail/bond it will be difficult to trace him; since he is also a person of no fixed abode.
9. The accused is charged with a serious offence that carries a death penalty and is likely to abscond if released on bail/bond.

Issues for determination

10. I have considered the affidavit of the accused and that of the investigating police officer, (No. 87935 Cpl Luke Rotich).
11. As a result, I find that the accused is a person of no fixed abode. I further find that he resisted arrest and still managed to flee from the scene of crime and was later arrested.
12. In the circumstances I find that the accused is a flight risk and that if he is released on bail/bond he may not turn up for his trial. I therefore find that this is a compelling reason within the meaning of article 49 of *the Constitution* of Kenya that warrants the denial of his bail.
13. In the premises, I find that the application of the accused fails and hereby dismissed in its entirety.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF MARCH 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr.Kinyua court assistant

Mr. Omenge for the accused/applicant

Ms Maina for the Republic/Respondent

