



**Ngala v Republic (Criminal Case E070 of 2021)
[2022] KEHC 12331 (KLR) (Crim) (24 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 12331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E070 OF 2021
DO CHEPKWONY, J
MARCH 24, 2022**

BETWEEN

STANSILAS BURUDI NGALA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Stansilas Burudi Ngala, has been charged with one count of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.

The particulars of the offence are that:-

“On September 18, 2021at around 1800hours at Kangemi area, Dagorretti Sub- County, within Nairobi County murdered Stanley Lukhana.

2. The accused pleaded “Not Guilty” to the charge. He has filed an application before this court dated November 16, 2021seeking to be released on and/or admitted to bail/bond on reasonable terms pending trial.
3. In the affidavit supporting the Motion, the Applicant deposes that, prior to his arrest, he was a resident at Kangemi. He states that he has been in remand since his arrest in October 2021 and he is entitled to be admitted on reasonable bail/bond terms. The accused undertakes to abide by the terms that will be set by the court upon his release. He has thus urged the court to grant him bail to enable him protect his precious investments and also look after his family.
4. However, the application was opposed by the Respondent vide an Affidavit dated December 2, 2021and sworn by PC Moses Mbwele of DCI, Dagorretti. He has stated that although bail is a constitutional right, it is not absolute. He has submitted that the Applicant does not qualify to be



admitted to bail pending trial since the prosecution has strong and irrefutable evidence against him which may cause the Applicant to be tempted to abscond the court's jurisdiction if released on bond. He has further submitted that there is risk of witness interference by the Applicant since the key witnesses are his neighbours. He has gone on to submit that the release of the Applicant will disturb public order since tension in the community was high at the time of the Applicant's arrest that the public wanted to lynch him but he was rescued by the police officers. Additionally, the Applicant has no fixed abode being that he cannot go back to Kangemi for his own security. He has thus urged the court not to admit the Applicant on bail since the prosecution is desirous of expediting the case.

5. At the hearing hereof, Mr. Farrah for the Applicant stated that they would rely on the application and filed submissions, then proceed to seek for leave for a rejoinder to the highlighted rival submissions by the prosecution.
6. In opposing the application, Ms. Gikonyo the prosecution counsel highlighted that there is apprehension that the accused person may threaten and intimidate the witnesses who are his neighbours and had tried to separate him and the deceased during the fight they had. Additionally, she submitted that the release of the Applicant/accused person would undermine public order being that prior to the Applicant's arrest, there was a lot of tension in the area. Further, the public wanted to lynch the Applicant but he was rescued by the police. She went on to state that the Applicant should not be released since he has no fixed abode as that he cannot go back to Bottom line area for his own security. Therefore, there is likelihood of him absconding from the jurisdiction of the court.
7. In rejoinder, Mr. Farrah submitted that with regard to interference of witnesses, the state has not placed before the court any evidence to support that claim hence it remains only as a fear. He went on to state that the court can order for the accused not to be seen within the vicinity of Bottom-line area. On the issue of fixed abode, Mr. Farrah submitted that the social inquiry report indicates the Applicant's ancestral home and both his parents are present so he has a fixed place of abode. Finally, on the issue of absconding, Mr. Farrah submitted that the accused person did not run away from the crime scene, thus his characteristics do not reflect those of someone who will abscond trial. It is for the above reasons that the Applicant's advocate urged the court to admit the accused to bail.
8. The court also called for a social inquiry to be conducted by the Probation Officer and a pre-bail report to be filed in court. The same was filed on March 23, 2022. I have read through it and find that the Probation Officer, after analyzing the social inquiry report, recommended that the accused could be released on bond.
9. I have considered the application and the rival submissions made by learned counsel in support and in opposition to the application. I have also considered the pre-bail report.
10. Under Article 50(2) of *the Constitution* of Kenya, 2010, "every accused person is presumed innocent until proved guilty".
11. Further, Article 49 (I) (h) of *the Constitution* of Kenya, 2010 provides that, "an accused person has a right to be "released on bond or bail" on "reasonable" conditions pending a charge or trial unless there are compelling reasons not to be released".
12. Similarly, Section 123(1) and (2) of the *Criminal Procedure Code*, empowers the trial court to admit an accused person to bail or release him or her upon executing a bond with sureties for his or her appearance.
13. However, the rights of the victim must be considered too, and in that case, the court must ensure that the trial proceeds by ensuring that the accused attends trial. Hence, the need to balance the accused's constitutional right to bail and/or bond vis-a-vis the need to ensure that the accused attends the trial.



14. Be that as it were, bail or bond will be denied where the prosecution presents convincing evidence to justify such denial and demonstrate, with convincing evidence that, the release of the accused will present risks, and that such risks cannot be managed, even with the attachment of appropriate conditions.
15. For an accused person to be denied bail, the burden lies upon the prosecution to prove that there are compelling reasons not to grant bail. The accused is therefore constitutionally entitled to bail as a matter of right. See the Court of Appeal in the case of *Michael Juma Oyamo & another -vs- Republic* [2019]eKLR, where it was stated that:-

“...Article 49(1) (h) of *the Constitution* states that an arrested person has the right “to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons”. It is therefore clear that such constitutional right can only be limited if the prosecution satisfies the court that there are compelling grounds to warrant its denial to an accused person...”
16. Thus, the issue for determination is whether the prosecution has made a case for the court not to release the Applicant on bail pending trial.
17. In the present application, the prosecution has advanced three grounds in opposition to the Applicant being released on bail pending trial.
18. First, the prosecution raised the issue of the likelihood of interference of witnesses since the Applicant and the witnesses are neighbors. Counsel for the Applicant opposed this ground and submitted that the prosecution had not tabled any evidence before the court in support of their assertion and so it was only a fear.
19. In the case of *Republic -vs- Nuseiba Mohammed Haji Osman* [2018] eKLR, the Court stated:-

“Denial of a constitutional right is not a matter to be treated lightly and therefore any claims made against an accused person aimed at curtailing the constitutional right to liberty must not be made on speculation or conjecture.”
20. Further, in the case of *Republic -vs- Dwight Sagaray & 4 others* [2013] eKLR, Korir, J. stated thus:-

“For the prosecution to succeed in persuading the court on this criteria, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others. I agree with the holding in *Panju vs Republic* [1973] E.A 284, where the court in dismissing the prosecutor’s fear of interference with witnesses stated that before any one can say there would be interference with vital witnesses, at least some facts must be placed before court otherwise it is asking the court to speculate.”
21. In the present application, the prosecution did not show in anyway how the Applicant attempted to interfere with such witnesses. It has not even been shown in what capacity the accused would interfere with witnesses. The pre-bail report has shown that he was working as a Messenger at Bollore Company In the absence of such evidence, in my view, the objection of the prosecution remains only a fear.



22. The second ground relied upon by the prosecution in opposing the accused application is on public order. The prosecution submitted that tension was high in Bottomline in Kangemi after the death of the deceased by the Applicant. In fact, the Applicant was about to be lynched by the public were it not for the police officers who rescued. In response, Mr. Farrah, the Applicant's advocate submitted that the court can make an order to bar the Applicant from going back to Bottomline. The pre-bail report also shows that the Applicant sustained serious head injuries from the attack by the public. The Applicant also stated that that he will not go back to Bottomline. It appears that the Applicant's life would be in danger going by the foregoing. However, in my opinion, the existing security situation at Bottomline does not, in my view, constitute compelling reason to warrant continued denial of bail at this stage in the trial. It would be sufficient to warrant stringent bail terms for the Applicant as submitted by Ms. Farrah but not to deny bail.
23. Finally, the prosecution submitted that the Applicant has no fixed place of abode since he cannot return to Bottomline for his own security. The Applicant's advocate disputed that submission. She stated that the social inquiry report has clearly demonstrated the Applicant's ancestral home, further both his parents are present.
24. The pre-bail report indicate that the accused was evicted from his place of residence in Bottomline after the offence. His father lives in Bottomline area so he cannot accommodate him due to the existing security issues on the Applicant's safety. However, a paternal uncle in Pipeline is willing to accommodate the Applicant. From the record it appears the Applicant's family is willing to accommodate him once bail is granted.
25. Therefore, in my view I do not find any compelling reason proved on balance to warrant denial of the accused's constitutional right to bail. What is important is that reasonable conditions for such bail be imposed as will ensure that he attends court as and when required for his trial.
26. Accordingly, the application for bond is allowed on the following terms:-
- a) The accused person may be released on a bond of Kshs.500,000/= with one surety of a similar amount, and or
 - b) In the alternative, pay a cash bail of Kshs.200,000/=.
 - c) The accused person to provide full particulars of the contact person.
 - d) Accused is barred form stepping at Bottom line area for his own security.
 - e) Failure to abide by any of the above conditions, the accused person stands to have his bond cancelled.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF MARCH, 2022

D. O. CHEPKWONY

JUDGE

