



**Republic v Ahmed Hussein Quracha Alias Kabelo. (Criminal Case
27 of 2020) [2022] KEHC 11944 (KLR) (Crim) (26 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 11944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 27 OF 2020
LN MUTENDE, J
APRIL 26, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

AHMED HUSSEIN QURACHA ALIAS KABELO. ACCUSED

RULING

1. Ahmed Hussein Quracha, the accused was arraigned in court following allegations of having committed murder contrary to section 203 as read with section 204 of the *Penal Code*. Through a notice of motion dated May 29, 2020, he seeks to be admitted to bail pending trial.
2. The application is premised on grounds that the applicant suffers from various ailments and diseases, a situation that has seriously deteriorated and still deteriorates by the hour and as such requires specialized and regular medical attendance. That: the accused undertakes to attend court whenever required; he has a fixed place of abode in Eastleigh within Nairobi County, he is a father of one year old baby and is the sole bread winner; he will not interfere with witnesses or endanger the safety of the public and that the applicant will suffer if the application is not granted.
3. The accused swore an affidavit in support of the application where he reiterated what is stated on the grounds on the face of the application and added that he is not a flight risk and he undertook not to interfere with witnesses.
4. The state through No 95449 PC Abdirizak Ahmed Ali, the investigating officer, opposed the application. He averred that the accused attacked the deceased with a weapon, kitchen knife, in the presence of his friends and his cousin, the former wife of the deceased, Muna Yussuf Kachore and if granted bail he would interfere with the witnesses. That the accused is charged with a serious offence



and if found guilty he may be sentenced to suffer death which is an incentive for him to abscond and also interfere with witnesses.

5. Both parties opted to rely on affidavit evidence. The accused person is alleged to have committed a felony. article 49 (1) (h) of the [Constitution](#) provides 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 not to be released.

6. The afore stated provision of law gives the court the discretion to determine whether or not to grant bail. In that regard I note that although bail is an accused person’s constitutional right, it is not absolute.

7. Considerations in determining whether or not to grant bail are set out in [Kenya Judiciary’s Bail and Bond Policy Guidelines](#), 2015 at p. 25 which provides as follows:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- a) That the accused person is likely to fail to attend court proceedings; or
- b) That the accused person is likely to commit, or abet the commission of, a serious offence; or
- c) That the exception to the right to bail stipulated under section 123A of the [Criminal Procedure Code](#) is applicable in the circumstances; or
- d) That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e) That the accused person is likely to interfere with witnesses or evidence; or
- f) That the accused person is likely to endanger national security; or
- g) That it is in the public interest to detain the accused person in custody.

8. In the Nigerian Supreme Court case of [Alhaji Mujahid Dukubo Asari vs Federal Republic of Nigeria](#) SC 20A/2006, a criteria to be considered in granting bail pending trial was set as follows:

- (v) The probability that the accused may not surrender himself for trial;
- (vi) The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;
- (vii) The likelihood of further charges being brought against the accused;
- (viii) The probability of guilty;
- (ix) Detention for the protection of the accused;
- (x) The necessity to procure medical or social report pending final disposal of the case...”

9. In the case of [Republic vs William Mwangi Wa Mwangi](#) [2014] eKLR Muriithi J held that:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the constitutional right to bail...It is trite that the cardinal principle which the court should



consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”

10. The *Constitution* does not define the term “compelling reasons”. But, generally a compelling argument would be something that is in accordance with the fact or some reality. In the case of *Republic vs Joktan Mayende & 3 Others* Bungoma High Court Criminal Case No 55 of 2009 the court defined the term “compelling reasons” as follows:-

“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*.”

11. From a reading of decided cases, the most important test is whether the accused will turn up for trial. The presumption of innocence while the accused is yet to be found guilty while being considered, the interest of justice must also be weighed against the accused’s right to liberty.

12. It is a legal principle that an accused person is not guilty unless proven guilty. In the case of *R vs Oakes* [1986] 1 R CS it was held that:

“The presumption of innocence lies at the very heart of the criminal law and is protected ...this presumption has enjoyed longstanding recognition at common law and has gained widespread acceptance as evidenced from its inclusion in major International human rights documents...”

13. Therefore, prior to the case being proved, an accused person’s liberty should not be deprived on flimsy reasons, it must be on cogent evidence.

14. It has been alleged that the accused is a flight risk and urged that there is a possibility of the accused interfering with witnesses. The integrity of witness evidence must be preserved; therefore, it would not be right for any witness to be interfered with. But, it is not enough to allege that there will be interference, this should be demonstrated. And, where what is stated remains mere allegations, if released on bail, conditions must be set to be adhered to by the accused person. In the instant case, Muna recorded a statement where she states that she resides at Pangani. It has been averred by the accused that he resides at Eastleigh. To interfere with the witness would entail the accused going to Pangani. The allegation that he will interfere with the witness is an apprehension not supported by any evidence, therefore the allegations are flimsy.

15. It is notable that relatives of the accused have approached the victims of the offence intending to explore alternative justice.

16. The upshot of the above is that, this court has absolutely no reason to deny the accused bail. Therefore, the accused may be released on bond of Ksh 1,000,000/- with a surety of a similar sum. During pendency of the case, upon being released from custody, he will be barred from interacting with witnesses who have recorded statements. In event that he disobeys the condition set, the prosecution will be at liberty to apply for cancellation of the bond.

17. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF APRIL, 2022.



L. N. MUTENDE

JUDGE

****IN THE PRESENCE OF:**

Mr. Ruiru for Accused

Ms. Oduor for the State

Court Assistant – Mutai

