



REPUBLIC OF KENYA



**Republic v Kieti & 2 others (Criminal Case E005 of 2022)  
[2022] KEHC 277 (KLR) (4 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 277 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE E005 OF 2022**

**MW MUIGAI, J**

**APRIL 4, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MOSES MUTHUKU KIETI ..... 1<sup>ST</sup> ACCUSED**

**DOMITILA KANINI KILOLE ..... 2<sup>ND</sup> ACCUSED**

**BONIFACE MUINDU KIIO ..... 3<sup>RD</sup> ACCUSED**

**RULING**

**1. Introduction:**

The accused herein Moses Muthuku Kieti, Domitila Kanini Kilole and Boniface Muindu Kii were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars are that on the 17<sup>th</sup> day of September, 2021 at Kunikila village, Mbiuni location in Mwala Sub-County within Machakos County murdered Allan Musila Kii.

2. The Mental Assessment Report for Domitila Kanini Kilole dated 16<sup>th</sup> March 2022 was filed in Court on 22<sup>nd</sup> March, 2022 while the Mental Assessment Reports for Boniface Muindu Kii and Moses Muthuku Kieti dated 30/03/2022 were filed on 1<sup>st</sup> April, 2022 stating that the accused persons were fit to plead.

3. On 9<sup>th</sup> March, 2022 when the accused persons appeared in Court prayed to be given witness statements and be granted bond terms. The Court ordered for pre-bail Reports to be undertaken in respect of all the 3 accused persons for the purposes of bond.

4. On 04/04 /2022 the Charge and Information was read over and explained to the accused persons in Kiswahili by the Court Clerk and the accused person herein replied



1<sup>st</sup> Accused - “Si Kweli” – it is not true

2<sup>nd</sup> Accused – “Si Kweli - it is not true

3<sup>rd</sup> accused – “Si Kweli - it is not true

5. The Plea of not guilty for the accused persons was entered.
6. Ms Hannah Ndungu is the Advocate on record for the Accused persons.
7. The Pre-bail reports in respect of the accused persons which were ordered to be undertaken on 9/03/2022 and were already in the Court file.
8. The Reports for Moses Mutuku Kieti 1<sup>st</sup> accused dated 15/03/2022 filed in Court on 21<sup>st</sup> March, 2022 is as follows:

**1<sup>st</sup> accused – Moses Mutuku Kieti:**

1. That the Accused is a youthful person aged 27 years old. He is a family man with a new – born aged one week old and incubated. He used to depend on peasant farming and casuals jobs for livelihood. He is the sold breadwinner of his young family. No previous records of jumping bond. He has a fixed place of abode at Kunikila. He poses no security risk to community members and faces no security risk. He is positive towards bond and he pleads with the court to grant him lenient bond. He is willing to adhere to the bond terms if granted.
2. The Officer Commanding Mbiuni police station (OCS) and the Sub-county Criminal Investigating Officer (SCCIO) are not opposed to the accused being granted bond.

**2<sup>nd</sup> accused – Domitila Kanini Kilole:**

3. That the Accused is a middle aged woman aged 50 years. She is a widow and a mother of four children. She performs casuals jobs for livelihood. He is the sold breadwinner of his young family. No previous records of jumping bond. She has a fixed place of abode at Kunikila. She poses no security risk to community members and faces no security risk. She is positive towards bond and he pleads with the court to grant him lenient bond. She is willing to adhere to the bond terms if granted.
4. The local administration gave a positive report about her. They referred to her to have been a law abiding citizen.

**3<sup>rd</sup> accused – Boniface Muindu Kii**

5. That the Accused is a middle aged man aged 54 years old. He is a family man married with 2 children. He is not of good health. He does not pose a threat to the witnesses and victims if granted bond.
6. The community gave a positive report about him.
9. In conclusion the Reports were favourable for the accused persons to be released on bond/bail.
10. Article 49(1)(h) of the *Constitution* provides that: -  
An accused 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.
11. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary’s Bail and Bond Policy Guidelines, March 2015 at p. 25 which sets out judicial policy on bail as follows:  
The following procedures should apply to the bail hearing:



Clause 426

- 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.

**Determination**

12. In light of Article 49(1) Constitution of Kenya 2010, the Prosecution/DPP have/has not adduced any compelling reasons to prevent this Court not to grant bail/bond.
13. Each of the Accused person shall be released on bond of Kshs.500,000/- with one(1) surety of like amount.

The bond/bail is on the following conditions:-

- a. The accused persons shall at all times appear/attend court as and when required.
- b. The accused persons shall not interfere with the witnesses or tamper with the evidence.
- c. The accused persons shall not be involved and/or reside with the immediate family so as to ensure their security and safety.
- d. The accused persons shall not leave the jurisdiction of this Court without permission of the Court.

It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT ON 4<sup>TH</sup> APRIL 2022. (VIRTUAL CONFERENCE)**

**M.W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

ACCUSED (1) (2) & (3) – PRESENT

MS H. NDUNGU FOR THE ACCUSED PERSONS

MWONGERA FOR THE STATE



