



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gitonga & 2 others (Criminal Case E062 of 2021)
[2022] KEHC 11572 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E062 OF 2021
RB NGETICH, J
JULY 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH MUTAHI GITONGA 1ST ACCUSED

KENNEDY MUTARI MURIUKI 2ND ACCUSED

MARY ACHIENG OGINGA 3RD ACCUSED

RULING

1. The accuseds 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 October 21, 2021 at Komothai Girls High School in Kiratina Location, Githunguri Sub-County within Kiambu County, jointly murdered BMM
2. The charge and its full particulars were read over to the accused persons on November 23, 2021. They all denied the charges and a plea of not guilty was entered for each accused person. The court called for a prebail report.
3. On August 13, 2022, the state through Mr. Gacharia indicated that the state was opposed to the accused persons being granted bail and wished to file an affidavit to show that there are compelling reasons to deny accused bond/bail.
4. The report on Joseph Mutahi 1st accused indicate his family pleads with the court to grant the accused bond; they depend on subsistence farming and thus not able to raise bond. The family promised to support the accused and ensure he attends court if released on bond. The employer describes the 1st accused as a very disciplined person and pleads with the court to grant him bail.
5. The report of the 2nd accused Kennedy Mutari Muriuki states the family is willing to assist him if granted bail. They reckon they are low-income earners and not in a position to raise cash bail. The



father of the accused stated that he is willing to mobilize resources if the accused is granted bail. The employer of the 2nd accused describes him as a hardworking person and pleads with the court to grant him bail pending trial.

6. In respect to 3rd accused person, report indicate she is a single mother of one and pleads to be released on bond. The father of the 3rd accused pleads with the court to grant her bond, though he states they are not in a position to raise the bond, he is willing to assist the 3rd accused to attend court if released on bond.
7. The administration describes the 3rd accused as a hardworking mother and pleads that she be granted bail.
8. From the report, the victim's mother stated that she is saddened by the loss of her son who was aged 17 years and a second born in the family and she cannot stand the sight of the accused persons. She opposes the accused persons being granted bail.
9. The state counsel indicated that they were opposed to the accused persons being granted bail but did not give reasons as to why the State was opposed to the accuseds being granted bail. No affidavit stating compelling reasons was filed.
10. Apart from saying that she is saddened by the death of the son which is expected of any close relative, the victim's mother did not state compelling reasons to warrant to persuade court to deny accused persons bond.
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:

- (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.
12. From the above, it is clear that the most important aspect in considering bail is the accuseds attendance in court and the interference of witnesses. The families of the accused persons are willing to ensure that the accused persons attend court. There is no claim of likelihood of interference with witnesses.
13. From the foregoing, I see no compelling reasons to deny the accused person bond pending trial.



14. Final Orders:-

Each accused person may be released on a personal bond of Ksh 500,000/= with one surety of a similar amount.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 28TH DAY OF JULY, 2022

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua – Court Clerk

Accused 1 – Present

Accused 2 – Present

Accused 3 – Present

Mr. Chege holding brief for family of deceased

