



**Republic v Julius (Criminal Case E009 of 2022)
[2022] KEHC 12637 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E009 OF 2022**

**LW GITARI, J
JULY 27, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONFACE MURITHI JULIUS ACCUSED

RULING

1. The accused herein is facing the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) (Cap 63 of the Laws of Kenya).
2. The particulars of the offence are that on the 17th day of April 2022 at Old Marima Market in Maara Sub-County within Tharaka Nithi County, the accused unlawfully murdered Franklin Gitonga Martin.
3. Before this court is the application that was made orally in court on 18th July 2022 by the counsel for the accused seeking for the accused to be released on bail pending trial.
4. The application was opposed by Ms. Maari, counsel representing the office of the Director of Public Prosecutions. She submitted that on the strength of the pre-bail report on record, the accused should not be released on bail as there is a likelihood that he would interfere with the prosecution witnesses.
5. I have considered the application before this court, the submission by the counsel for the parties as well as the pre-bail report dated 15th July 2022 that was prepared by Margaret Mugambi, Probation Officer, Chuka.
6. Article 49(1)(h) of the [Constitution](#) of Kenya 2010 provides that:-

“ An accused person has the right ...



(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

7. It follows that the right to bail pending trial is expressly conferred by the *Constitution*. However, the right is not an absolute right. It may be restricted where there are compelling reasons to do so. The burden of proof lies with the prosecution to show that there exist compelling reasons to deny an accused person bail. In addition, what constitutes the compelling reasons depend on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation.

8. The Nigerian Supreme Court (Justice Ibrahim Tanko Muhammad J.S.C.) set out some essential criteria on the issue of whether to grant bail in *Alhaji Mujahid Dukubo – Asari v Federal Republic of Nigeria* S.C. 20A/2006 as follows:

“...When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision. These criteria have been well articulated in several decisions of this court. Such criteria include among others, the following:-

- i. The nature of the charges;
- ii. The strength of the evidence which supports the charge;
- iii. The gravity of the punishment in the event of conviction;
- iv. The previous criminal record of the accused if any;
- 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. What the court has to consider in determining such an application is whether the accused will attend court if released on bail/bond terms. The discretion to grant bail rests with court. In exercising that discretion, the court must strike a balance between safeguarding the proper administration of justice and protecting the individual.

10. In interpreting the right to bail, Section 123A of the *Criminal Procedure Code* gives the parameters for the grant of the right to bail as follows:

“(1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

- (a) the nature or seriousness of the offence;



- (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) should be kept in custody for his own protection.”

11. In this case, no witnesses have been called yet. It was the prosecution's submission that the accused is likely to interfere with two witnesses and as such, the application should be deferred until the witnesses testify.
12. From the pre-bail report, it is clear that it is the deceased's family that has raised the concern of likelihood of witness interference by the accused. The pre-bail report is not made in vain and though it is not a binding document on this court, it nevertheless assists the court to determine whether there are circumstances which would compel the court to grant bail.
13. The issue of likelihood of interference with witnesses is no doubt compelling reason not to grant the accused person bail. It would be in the interest of justice that the said witnesses be heard first before bail can be considered. I therefore decline to grant the accused person bail at this stage.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 27TH DAY OF JULY 2022.

L.W. GITARI

JUDGE

