



**Republic v Shikuku Alias Ben (Criminal Case 014 of 2022)
[2022] KEHC 12139 (KLR) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE 014 OF 2022**

**LK KIMARU, J
JULY 25, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

BENEDICT SIMIYU SHIKUKU ALIAS BEN ACCUSED

RULING

1. The accused is facing the charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#). According to the particulars, the prosecution alleges that on March 20, 2020 at Umoja junction market, Kobos Sub location of Trans Nzoia County, the accused murdered David Mulongo. When the accused was arraigned before this court, he pleaded not guilty to the charge. His application to be released on bail pending trial was objected to by the prosecution.
2. The affidavit sworn by the investigating officer PC (W) Saidah Khatswenu asserts that, the accused is a flight risk. After the incident that led to the death of the deceased, the accused disappeared from the area, never to be seen until 16th of May 2022 when information was received from the deceased family that the accused had returned to the area to attend the of his son's funeral. The investigating officer swore that based on this conduct by the accused, he is likely to flee from the jurisdiction of this court. She noted that the accused fled to Uganda making it impossible for the police to secure his arrest after he had committed the offence. She urged the court to note the serious nature of the offence facing the accused and also the fact that the accused is likely to interfere with witnesses based on the fact that he had attempted to financially influence some of the members of the deceased family with a view to dissuading them from testifying in the case. She deponed that the facts of this case constitutes compelling reason to deny the accused bail pending trial.
3. In response, the accused swore a replying affidavit denying that he was a flight risk. He explained that after the incident that led to the death of the deceased, he sought to make peace with the family of the deceased but unfortunately they were hostile and indeed threatened to kill him. It was on that basis



that he fled from the area to secure his life. He denied the assertion by the investigating officer that he was a flight risk. He insisted that he was a family man with a fixed abode and known to members of the community in the area. He had no means to interfere with witnesses and therefore urged the court to release him on bail pending trial which is his constitutional right. He swore that he would abide by any conditions that the court will attach to secure his release on bail pending trial.

4. Article 49 (1) (h) of the Constitution grants all persons accused the right to be released on bail pending trial unless there are compelling reasons. The Constitution does not define what constitutes compelling reasons. However, the court in many of its pronouncements has identified some of the compelling reasons to include severity of the offence, whether the accused is a flight risk, whether the accused is likely to interfere with witnesses and whether the accused will comply with the terms imposed by the court for his release on bail pending trial. In the present case, it is the prosecution's assertion that since the accused went underground after allegedly committing the offence, he was a flight risk. His arrest was only secured about two years after the incident that led to the death of the deceased when the accused emerged from his hideout to his son's funeral. On his part, the accused explained his disappearance from the scene of crime to fear for his life after the family of the deceased had threatened to kill him immediately after the death of the deceased.
5. This court's evaluation of these competing positions leads it to the finding that indeed the accused is a flight risk. The explanation that he has given for his failure to surrender to the police after the incident that led to the death of the deceased does not curry favour with the court. Nothing prevented the accused from surrendering himself to the police to secure his safety after the incident that led to the death of the deceased. The accused went underground for a period of two years during which period he was a fugitive from justice. This court agrees with the prosecution that the accused's past conduct constitutes compelling reason for this court to deny him bail pending trial. He is a flight risk and cannot be trusted that he will attend court if he is released on bail pending trial.
6. In the premises therefore, this court denies the accused's application to be released on bail pending trial. He shall remain in remand custody until the conclusion of the trial. It is so ordered.

DATED AT KITALE THIS 25TH DAY OF JULY 2022.

L. KIMARU

JUDGE

