



**Republic v Mbinda (Criminal Revision E067 of 2022)  
[2022] KEHC 14515 (KLR) (Crim) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14515 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL REVISION E067 OF 2022**

**K KIMONDO, J  
OCTOBER 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CONSTANTINE MUTUKU MBINDA ..... ACCUSED**

**RULING**

1. The accused seeks bail pending trial.
2. His learned counsel, Mr. Khavagali, relied on Articles 49 and 50 of *the Constitution*, as read together with section 123 A(1) of the *Criminal Procedure Code*.
3. In a synopsis, he submitted that bail is a constitutional right; that the accused is deemed innocent at this stage; and, that there are no compelling reasons to deny the motion.
4. The republic opposed the application through a replying affidavit made by the investigating officer, Corporal Jaleny Omondi, and sworn on 25<sup>th</sup> October 2022. In a nutshell, it is averred that the accused has no fixed abode; that two of his minor children are potential witnesses; and, that other witnesses are his relatives or neighbours.
5. On 26<sup>th</sup> October 2022, I heard further arguments from the learned counsel for the accused and the republic.
6. I take the following view of the matter. The accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the night of 13<sup>th</sup> September 2022 at Soweto Highrise, Lang'ata Sub-County within Nairobi County he murdered Magdaline Katinda Wambua.



7. Those remain allegations; and the accused is presumed innocent at this moment. Under Article 49 (1) (h) of *the Constitution*, as read together with section 123 A(1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.

8. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in *Republic v Joktan Mayende & 3 others*, High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the Black's Law Dictionary 7<sup>th</sup> Edition. And accordingly, 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.

9. The overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic [supra]; *Muraguri v Republic* [1989] KLR 181; *R v Fredrick Ole Leliman & 4 others*, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.

10. There is no cogent evidence that the accused has no fixed abode or is a flight-risk. The mere fact that he lives in rented premises in an informal settlement should not be used against him. The replying affidavit at paragraph 3 states that "prosecution witnesses are neighbours to the accused...". It is then a paradoxical to then aver at paragraph 7 that "he has no known fixed abode".

11. It is not seriously contested that the deceased was the wife of the accused. Two of their minor children are lined up to testify at the trial. Such witnesses are vulnerable and the likelihood of interference by their father is not entirely remote.

12. I find that the latter point is a strong and compelling reason for denial of bail. I also note that other potential witnesses include relatives. The Victims Protection Act 2014 now requires that the views of the victim's family be considered at this stage.

13. That said, the court must strike a delicate balance that protects the rights of the accused but at the same time ensures that the course of justice is not frustrated.

14. I decline to grant bail at this stage. However, I direct that the motion be renewed after the two children or identified vulnerable witnesses have testified. To further secure the rights of the accused, and in the interests of justice, I direct that that this trial shall be fast-tracked.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2022.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read virtually on Microsoft Teams in the presence of-**

Accused.

Mr. Khavagali for the accused instructed by KKLaw Advocates.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

**Mr. E. Ombuna, Court Assistant.**

