



**Republic v Owaga (Criminal Case E052 of 2022)
[2022] KEHC 14364 (KLR) (Crim) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E052 OF 2022
K KIMONDO, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

NELSON MANDELA OWAGA ACCUSED

RULING

1. The accused prays for bail pending trial.
2. His learned counsel, Mr. Osewe, submitted that the accused has family ties in Nairobi and Homa Bay; that he is not a flight risk; and, that undertakes to attend to the trial. In a synopsis, he argued that there are no compelling reasons for denial of bail. Reliance was placed on the decision in *R v Fredrick Ole Leliman & 4 others*, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
3. The Director of Public Prosecutions opposed the application. The objections are founded on the replying affidavit sworn on 7th October 2022 by the investigating officer, Police Constable Jumba Gulavi.
4. 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 16th July 2022 at gatwekera area innKibera slums, Kibera Sub-County within Nairobi County he murdered Samuel Onyango Miyogi alias Daddy.
5. Those remain allegations; and the accused is presumed innocent at this moment. Under Article 49 (1) (h) of *the Constitution*, he is entitled to bail unless there be compelling circumstances. The overarching objective of bail is to ensure the accused attends trial. See *Muraguri v Republic* [1989] KLR 181; *R v Fredrick Ole Leliman & 4 others* [supra].



6. Two witnesses have already testified in this matter. One of the remaining witnesses is a minor, who according to the replying affidavit, resides in the same vicinity as the accused. The likelihood of interference with such a witness is thus not far-fetched.
7. Secondly, it is averred at paragraph 6 of the deposition that after the alleged homicide, the accused switched off his mobile phone, left the locus in quo and was arrested trying to cross into the Republic of Tanzania. That fact has not been controverted by the accused. The inescapable conclusion is that there is a real likelihood that he might abscond.
8. All those are strong and compelling reasons for denial of bail. Bail is refused at this stage. I however direct that in the interests of justice, this trial shall be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER 2022.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-
Accused.

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

Mr. E. Ombuna, Court Assistant.

