



**Republic v Onchiri (Criminal Case E055 of 2022)
[2022] KEHC 14304 (KLR) (Crim) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E055 OF 2022
K KIMONDO, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

SEVERIO MWEBI ONCHIRI ACCUSED

RULING

1. The accused prays for bail pending trial.
2. His learned counsel, Mr Osuma, first made the application on 29th August 2022. The republic opposed the application but sought for time to file a replying affidavit which has since been made by the investigating officer, Patrick Marete. His deposition is sworn on September 19, 2022.
3. The accused in turn lodged an affidavit sworn on October 3, 2022 to counter the averments by the investigating officer.
4. On October 22, 2022, I heard further submissions from the learned counsel for the accused and the republic.
5. In a synopsis, learned counsel for the accused submitted that bail is a constitutional right; and, that the accused is deemed innocent at this stage. He argued that the affidavit of Patrick Marete has pre-judged the guilt of the accused or his likelihood to interfere with evidence. Reliance was placed on the decision in *Michael Juma Oyamo & another v Republic*, Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR.
6. In particular, it is averred that since witness statements have already been taken, it is unlikely that the accused can interfere with witnesses including his two minor children. Furthermore, the accused offered to relocate from the locus in quo in Bahati, Nairobi, and to reside throughout the trial in



- Kenonka village in Nyamira County. He claims that his mother, Teresa Onguti, who stays there, will stand surety for him.
7. In a synopsis, learned counsel submitted that that there are no compelling reasons for denial of bail.
 8. As I indicated, the Director of Public Prosecutions opposed the application. The objections are founded on the replying affidavit of the investigating officer which I referred to earlier. The objections are four-fold: Firstly, that the circumstances around the homicide point to the complicity of the accused; secondly, that two of his minor children are potential witnesses; thirdly, that there are other vulnerable witnesses and relatives who reside in Bahati; and, fourthly, that the court should strike a fair balance between the rights of the accused, the family of the victims and the course of justice.
 9. 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 August 12, 2022 at Gramsons Apartments Magorofani, Bahati Estate in Kamukunji Sub-County within Nairobi County he murdered Cynthia Moraa Onchiri.
 10. 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.
 11. 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 7th 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.
 12. 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.
 13. When I juxtapose those principles against the facts here, I find further as follows. The deceased was the wife of the accused. Two of their children, who are now living with relatives, are lined up to testify at the trial. It would be simplistic to say that they are beyond the reach or influence of the accused merely because they have recorded statements; or, because the accused can relocate to Nyamira. I have reached the conclusion that that the likelihood of interference with such a witnesses is not far-fetched.
 14. I find that that is a strong and compelling reason for denial of bail. In addition, other potential witnesses include close relatives. The Victims Protection Act 2014 now requires that the views of the victim's family be considered at this stage.
 15. However, 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 thwarted. I accordingly refuse to grant bail at this stage but 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 28TH DAY OF OCTOBER 2022.



KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Mr. Manthi together with Mr. Osuma for the accused instructed by Auma B. A. Chogo Advocate.

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

Mr. E. Ombuna, Court Assistant.

