



Wanjiru & another v Republic (Miscellaneous Criminal Application E016 of 2022) [2022] KEHC 14801 (KLR) (24 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2022**

GL NZIOKA, J

OCTOBER 24, 2022

BETWEEN

GLADYS MUMBI WANJIRU 1ST APPLICANT

JACK KARIUKI MAINA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants are charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars thereof are that, on the 16th day of August 2022, at Geta village in Wanjohi Sub-County, they murdered James Mwangi Waititu.
2. The information was read out to the applicants and they pleaded not guilty to the same. The application before the court was made orally by the applicants learned counsel seeking for bond and or bail pending the hearing and determination of the case.
3. The prosecution in response told the court that, the investigating officer indicates that, there is a lot of hostility on the ground and it may not be safe to release the applicants on bond as of now. However, the prosecution sought and the court ordered that, a pre bail report be presented, before any order(s) is issued.
4. The court ordered the investigation officer to reduce the information given to the court by the learned state counsel into an affidavit and the Probation Department was ordered to prepare and file a pre-bail report.
5. However, when the matter was subsequently mentioned before the court, the prosecution in a rather interesting and shocking turn of events, informed the court that, the investigation officer was not opposing the grant of the bond to the applicants.



6. In even further interesting and concerned turn of events, the learned counsel Mr. Shadrack Wambui holding watching brief for the victim's family informed the court off record that, the victim's family were considering the amicable settlement of the matter and may not be proceeding with it.
7. Be that, as it were the court ordered the investigation officer to clear the varying stand he has taken in the matter by deposing to the same. I note that, on October 12, 2022 No 83163 PC Ephantus Gitani the officer filed an affidavit in which he states as follows;-
 - a) That, I am the co-investigating officer in a case of Murder contrary to section 203 as read with section 204 of the *Penal Code* vide NaivashaHCCER 016/2022/CR Kipipiri 244/228/2022 to the lead investigating officer CI Daniel Ojwang who is away attending personal matters, in this case and am aware of matters giving rise to this affidavit and therefore competent to swear this affidavit.
 - b) That, the accused persons are Gladys Mumbi Wanjiru & Jack Kariuki Maina.
 - c) That, initially there was hostility between the deceased family and family of the second accused.
 - d) That, now the hostility has ended and the two families are conversing.
 - e) That, the investigating team has no objection has to the two accused persons being released on bond.
8. I also note, that a pre-bail report has been filed. I have gone through the same and note that, the family of the deceased are not opposed to the release of the applicants and are negotiating reconciliation plan. Further, the applicant's family members are ready to offer security for their release.
9. Having the considered the aforesaid, I find that, the provision of section 49(1)(h) of the *Constitution* of Kenya states that, an arrested person has a right to be released on bond or bail on reasonable convictions pending a charge or trial, unless there are compelling reasons not to be released.
10. Similarly section 123(1) and (2) of the *Criminal Procedure Code*, empowers the court to admit the accused person to bond or bail on reasonable terms in determining the bond terms, section 123A of the *Criminal Procedure Code*, sets the factors that the court will take into account while determining the bond terms. Similarly the Judiciary Bail and Bond Policy Guidelines provides that, bond terms should not be excessive and commensurate to the offence.
11. Be that as it were, the paramount reasons to consider while granting bail or bond are that every person is presumed innocent until proved guilty as stated underarticle 50(2) (a) of the *Constitution* and that, the bail or bond terms must ensure that the accused will attend the trial.
12. In the subject matter herein, the prosecution has not given any compelling reasons to deny the applicants bond or bail. However, in setting the terms thereof I have considered inter alia, the nature, seriousness of the offence, character of the applicants as evidenced by the pre-bail report I find that, there is no reason to deny the applicants bond or bail. I therefore grant each applicant bond of Kshs 500,000 with one surety of like amount. In addition, each applicant will provide particulars of one contact person. In addition to the surety, who will ensure they attend court. Further, within the initial stage of the case and/or until the case is heard the applicants shall not interfere with the witness or subvert the administration of Justice. Any breach of the aforesaid terms will lead to the cancellation of the bond.



13. Those then are the orders of the court.

DATED, DELIVERED, AND SIGNED ON THIS 24TH DAY OF OCTOBER 2022.

GRACE L. NZIOKA

JUDGE

In the presence of:-

Applicant in person

Ms Maingi for the Respondent

Ms Ogutu- Court Assistant

