



REPUBLIC OF KENYA



**Republic v Ngeno (Criminal Case 20 of 2020)  
[2022] KEHC 15634 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 20 OF 2020  
RL KORIR, J  
NOVEMBER 23, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**OBADIAH KIPKORIR NGENO ..... ACCUSED**

**RULING**

1. The accused was charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence were that on August 8, 2020 at Mbalek area in Bomet Central Sub County jointly with another not before court murdered Dominic Bor.
2. In a ruling dated July 26, 2021, this court granted the accused bail on the following conditions:-
  - I. That he shall provide a personal bond of Kshs 300,000 and provide two sureties of similar amounts each.
  - II. That he shall not interfere with witnesses in any way.
  - III. That he shall attend court whenever required and shall not impede the trial in any way.
3. The accused's bond terms were cancelled on July 5, 2022 when the accused failed to attend a hearing.
4. On July 18, 2022, the accused's counsel applied to have the bond terms reinstated. In a ruling dated July 29, 2022, this court declined to reinstate the bond terms. This court further discharged the sureties.
5. On November 1, 2022, counsel for the accused applied to have the accused granted fresh bond terms. She submitted that the accused was no longer interested in attending the police training which he did earlier. It was the counsel's further submission that the accused was willing and ready to attend court as and when required to do so.
6. The prosecution on the other hand left the matter to the court's discretion.



7. Article 49 (1) (h) of the *Constitution* states that an accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

8. The principles that guide a trial court when considering whether or not to grant bail to an accused person are well settled by precedent in the case of *Ng'ang'a v Republic* [1985] KLR 451 where Chesoni J, (as he then was) held:-

“ 1. The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors:

(a) In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:

(i) The accused will fail to turn up at his trial or to surrender to custody;

(ii) The accused may commit further offences; or

(iii) He will obstruct the course of justice.

(b) The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

(i) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;

(ii) The strength of the prosecution case;

(iii) The character and antecedents of the accused;

(iv) The likelihood of the accused interfering with prosecution witnesses.”

9. The grant of bail is an exercise in Judicial discretion. Such judicial discretion is exercised judiciously. The Judiciary Bail and Bond Policy Guidelines of 2015 have provided parameters to assist the court in exercising discretion judiciously. With respect to bail and bond, they require that the court in granting bail should consider the seriousness of the offence, the strength of the case, likelihood of interference with witnesses, failure of the accused to attend trial or where the accused is charged with another case, the need to protect the victim(s), the security and safety of the accused, the likelihood of absconding from the jurisdiction of the court and other factors which must be weighed by the court in the interest of justice. Such an exercise of discretion requires a wholistic approach and the court must, in close circumspection, take to account the circumstances of the case and the accused person individually.



10. It is the duty of the prosecution to demonstrate the compelling reasons that would make this court deny the accused bail. In the case of *Johnstone Muthama & 8 others v Inspector General of Police & 2 others* [2016] eKLR, the court held that:-

“The burden though will always be on the DPP to satisfy the court before whom the bail application is made that there are compelling reasons to deny the bail.”

11. The prosecution did not oppose the prayer for fresh bond terms, they instead left it to the court’s discretion. It is my finding that the prosecution failed to discharge this burden as there were no compelling reasons advanced to deny the accused bail/bond. In *Michael Juma Oyamo & another v Republic* [2019] eKLR, the Court of Appeal held that:-

“We wish to adopt the definition of what amounts to compelling reasons as defined by the High Court in R v Joktan Malende and 3 others Criminal Case No 55 of 2009 as follows:

.....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 standards set by the *Constitution*.....”

12. In this case the court had earlier cancelled the accused’s bond as he failed to attend his trial. The reason given by his counsel for his non-attendance was that he was attending police training at the police training college in Kiganjo. This court found the non – attendance to be a violation of the terms of the bond. It was a condition of his bond that he shall attend court whenever required and not impede the trial in any way. He impeded the trial by not being present on the scheduled hearing dates.

13. I have considered the review application. The accused has undertaken to observe the terms of the bond, and in particular to attend court for his trial. I am persuaded that he will keep his undertaking.

14. In the end result, I grant the accused bond on the following conditions: -

- i. He shall sign a personal bond of Kshs 500,000/- and provide 1 surety of similar amount.
- ii. In the alternative, he shall sign a personal bond of Kshs 300,000/- and provide 2 sureties of similar amount.
- iii. He shall not interfere with witnesses in any way.
- iv. He shall attend court whenever required and shall not impede the trial in any way.

15. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 23RD DAY OF NOVEMBER, 2022.**

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**R LAGAT KORIR**

**JUDGE**

**Ruling delivered in the presence of the accused, Ms Chemutai holding brief for Ms Chirchir for the accused, Mr Waweru holding brief for Mr Njeru for the State, and Kiprotich (Court Assistant)**

