



**Mwangi v Republic (Criminal Case E059 of 2022)
[2022] KEHC 15665 (KLR) (Crim) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15665 (KLR)

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

**CRIMINAL
CRIMINAL CASE E059 OF 2022**

JM BWONWONG'A, J

NOVEMBER 23, 2022

BETWEEN

FREDRICK MACHARIA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 (Cap 63) Laws of Kenya. The particulars of the offence are that between the night of 21st and 22nd August 2022 in Bondeni in Ruai area within Kayole Sub County, Nairobi County murdered Jane Rose Wangui. The accused took plea and pleaded not guilty to the offence of murder.
2. He has now approached this court by way of notice of motion dated 22nd October 2022 seeking to be released on reasonable bail/bond terms pending his trial. His application is supported by an affidavit of a similar date. It is grounded on the averments that he will abide by the bond terms set by the court. Secondly, he is the sole breadwinner in his family, which has been psychologically by his arrest and confinement. That he has a fixed abode within the jurisdiction of Kenya in Muranga County Kangema district Kiauo village and he is not a flight risk. He undertakes not to interfere with the prosecution witnesses.
3. No. 61123 Sergeant Philip Mutisya, the investigating officer has sworn an affidavit dated 19th October 2022 in opposition to the application for bond. He avers that the accused and the deceased were living as husband and wife, prior to her demise. Further, the accused is likely to interfere with the prosecution witnesses, who are his immediate neighbours and are well known to him. He maintains that the accused has no fixed permanent abode having been living in the deceased's house prior to his arrest. Further, that the accused escaped from the scene of crime after the incident and he is likely to flee if released



on bail/bond. The investigating officer contends that he has adduced compelling reasons for the court to deny the accused bail.

4. The parties did not file written submissions in support of their positions in the application.

Issues for determination

5. Having considered the application, the response thereto and the applicable law, I find that the issue for determination is whether there are compelling reasons to deny the accused bail/bond.

Analysis and determination

6. Article 49 (1) (h) of *the Constitution* of Kenya guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya.

7. The right of an accused person to be released on bail is not absolute.

8. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of *the Constitution* of Kenya, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75), Laws of Kenya which provides that:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

- (a) Nature or seriousness of the offence;
- (b) The character, antecedents, associations, and community of the accused person;
- (c) The defendants record in respect of the fulfillment of obligations under previous grant of bail;
- (d) The strength of the evidence of his having committed the offence:

- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;

- (a) Has previously been granted bail and has failed to surrender to custody if released on bail, it is likely that he would fail to surrender to custody;

- (b) Should be kept in custody for his own good.”

9. *The constitution* specifically requires under Article 49 (h) of *the Constitution* of Kenya that the terms of bail to be attached to an accused, who is released on bail/bond shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of *the Constitution* places the burden of proof on the state to demonstrate compelling reasons.

10. The court called for a probation report which was filed by the probation officer. The report provides the court with more information on the accused. It records that the accused was working as a mason in Nairobi. Of the family of the deceased, the deceased’s mother is still in pain about the untimely death of her daughter. She also opposes the application for bail/bond.



11. In the instant application, the investigating officer claimed that the accused was likely to interfere with the prosecution witnesses. This is because the witness statements have been supplied to him and he knows their identities. Further, the witnesses are his immediate neighbours. However, no evidence has been placed before the court of the alleged interference or of any prosecution witness who will allegedly be interfered with by the accused. In the absence of such evidence, his averment that there is a likelihood that the accused is likely to interfere with the prosecution witnesses is speculative and inadmissible. I therefore reject his averment for that very reason.
12. It was further claimed by the respondent that the accused is a flight risk, because he lacks a known permanent residence having been living in the deceased's house in Ruai area in Nairobi. The flight of the accused from the scene is a common place in Kenya and cannot therefore be the basis for denial of bail.
13. I find that the accused has a place of abode in Kiauo village in Kangema district within Muranga County.
14. Consequently, the averment that he lacks a place of fixed abode is dismissed for lacking in merit.
15. After taking all the foregoing matters into account, I find on the evidence and the applicable law that there are no compelling reasons to deny bail/bond to the accused.
16. In the premises, the application of the accused succeeds and he is hereby granted bond/bail in the sum of Kshs. 300,000/- with a surety of a similar amount to be approved by the Deputy Registrar of this court.

JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD NOVEMBER OF 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Ms Maina for the Republic

Ms Kathurima for the accused

