



**Republic v Wairimu (Criminal Case E012 of 2021)
[2022] KEHC 15691 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E012 OF 2021
RB NGETICH, J
NOVEMBER 17, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL NGARUIYA WAIRIMU ACCUSED

RULING

1. The accused was charged with the offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code*. Particulars are that on 28th day of October 2018 at about 2300hrs in Githiga Location, Githunguri Sub-County, Kiambu County murdered Catherine Wamaitha Kuria.
2. The charge and its full particulars were read over and explained to the accused on 1st April 2021. He denied the charge and plea of not guilty was entered. The state counsel Mr. Kasyoka informed the court that the state is not opposed to the accused being released on bail but urged the court to call for a pre-bail report.
3. Pre-bail report was filed on 30th April 2021. The report indicate that the deceased was a wife to the accused and were in an on and off relationship. The report further indicate that the accused is a security threat to the victim's family as he belongs to a gang.
4. In view of the pre-bail report, counsel Gathua for the accused filed a formal application dated 25th October 2021 for bond indicating that brother of the accused Daniel Mburu is willing to accord the accused a fixed abode as well as provide security for his release and ensure that he attends court when required.
5. The application is opposed by the replying affidavit sworn by PC Kelvin Omanga the Investigating Officer in this matter. He averred that the crime occurred on 27th October 2018 and immediately after the offence, the accused went into hiding and was only arrested for the crime of Robbery with Violence in March 2021 through Kiambu Police Station.



6. He further averred that the accused has no fixed abode and he is apprehensive that the accused is a flight risk and on the 4th of November 2018, he threatened the deceased's son who is the key witness.
7. In response, the accused filed a further affidavit in which he denied being a flight risk and has never gone into hiding and that he continued to work at Enert Ngugi Farm.

Analysis and Determination

8. I have considered averments herein. Article 49(1)(h) of the Constitution gives an accused person a 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.
9. In considering whether to grant bail/bond the court is guided by the Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P. 25 which sets out judicial policy on bail as follows:-

“The following procedures should apply to the bail hearing:

The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-

- a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, serious offence; or
 - c. That the exception to the right to bail stipulated under section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.
10. From the above guiding principles, the question is whether the prosecution has satisfied the court that there are compelling reasons to deny the accused bail.
 11. From the prebail report and averments from Investigating Officer, the accused went into hiding after occurrence of the offence herein until when he was apprehended in respect of another offence after a period of three (3) years. I do agree with the Investigating Officer that if accused is released on bond, there are high chances that he may abscond court in view of his conduct immediately after the offence.
 12. From the foregoing, I find that there are compelling reasons to deny the accused bail.

13. Final Orders:-

1. Application dated April 30, 2021 is hereby dismissed.
2. Accused to be remanded in custody pending hearing and determination of this case.



RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 17TH DAY OF NOVEMBER, 2022.

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua/Martin – Court Assistant

Accused – Present

Mr. Kasyoka – For State

