



**Republic v Farah (Criminal Case E085 of 2022)
[2022] KEHC 16953 (KLR) (Crim) (30 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E085 OF 2022
K KIMONDO, J
DECEMBER 30, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

MAHADH FARAH ALIAS ISSA ACCUSED

RULING

1. The accused seeks bail pending trial.
2. His learned counsel, Mr. Kanyoko, first made the application on December 16, 2022. The application was opposed by the Republic who sought time to lodge a replying affidavit. A deposition has since been sworn by Police Constable Allan Ochieno on December 23, 2022.
3. The family of the victims also opposes release of the accused through an affidavit sworn by Hassan Abdifatah, a son of the deceased, on December 22, 2022; and, a further affidavit by the same deponent on December 28, 2022.
4. Learned counsel for the accused submitted that the accused is a resident of Nairobi and surrendered himself to the police. He denied that the accused is a Somali national or facing other criminal charges in Banadir Regional Court. Counsel submitted that the documents annexed from the Director of National Registration confirm that the accused holds a valid Kenyan Identity Card.
5. Counsel thus argued that the accused is not a flight-risk as alleged by the prosecution and victims. He also stated that the accused is asthmatic and requires medical attention. He also submitted that the accused does not hold any office of authority and is “incapable of interfering with any witness(es)”.



6. In a synopsis, counsel contended that there are no compelling reasons to deny the motion. He relied on articles 49 and 50 of the [Constitution](#), as read together with section 123 A (1) of the [Criminal Procedure Code](#).
7. The Republic on the other hand submitted that the accused went into hiding after the incident and switched off his mobile phone. The State denies that he voluntarily surrendered to the police. It is averred that following a tip from the public, the accused was arrested from a hide-out in Eastleigh section III months later.
8. The learned prosecution counsel also stated that the accused threatened to kill a witness, Hassan Abdifatah, who has sworn an affidavit in this matter. Doubts were also cast on the status of his nationality. In that regard, it was submitted that critical documents, for instance the birth certificate or his mother's identity card, were not tendered to the Director National Registration before the issuance of his identity card in Kenya.
9. Finally, it was contended that the accused uses different names or aliases. A contested letter from the Banadir Regional Court in Somali Republic dated August 24, 2019 was tendered to show that the accused faced a charge of murder there.
10. That version is supported by the victims. According to the two affidavits I referred to, it is averred that the accused has previously lived in Somalia and was convicted of murder by the said court. The letter from the court is attached marked HAS-1. It is also averred that he has threatened to kill the deponent. A compact disk containing threatening messages is annexed together with a certificate of electronic recording.
11. In a nutshell, the victim's family objections are three-fold: That the accused is a flight-risk; that the security of witnesses would be prejudiced; and, that the course of justice can only be secured by holding the accused in custody.
12. I take the following view of the matter. No witnesses have taken to the stand yet. It follows that 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.
13. 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](#).
14. 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.
15. When I juxtapose those principles against the materials before the court, I find as follows. Firstly, the homicide occurred on September 11, 2022. The accused was only arrested on December 4, 2022 as deposed at paragraphs 5 and 6 of the affidavit of the investigating officer. Although the accused claims



he surrendered to the police after the incident, there is a dearth of evidence about it and the timelines do not fully support his assertions.

16. Secondly, I cannot close my eyes to the serious allegations that the accused may be a Somali national. I say that very guardedly noting that he holds a Kenyan Identity Card; and, that the issue remains contested. The allegations that he is the same person who faced a murder charge before the Banadir Regional Court has not been proved for now. But it is also a worrying matter.
17. Granted all those circumstances, I find that the likelihood to abscond is high. Paraphrased, the attendance of the accused at his trial has been cast into doubt.
18. Thirdly, from the two depositions by Hassan Abdifatah, a son of the deceased in this case, it appears that the accused has made serious threats to him or members of the family of the victim. The *Victims Protection Act* 2014 now requires that the views of the victim's family be considered at this stage. I have concluded that the security of such witnesses would be jeopardized by the release of the accused.
19. Fourthly, the accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the 1 September 1, 2022 at Maida Apartments, Eastleigh Area, Starehe Sub-County within Nairobi County he murdered Abdifatha Hassan Baare alias Mrefu.
20. The upshot is that all those are strong and compelling reasons for denial of bail. I accordingly decline to grant bail at this stage. However, 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 30th day of December 2022.

KANYI KIMONDO

JUDGE

Ruling read virtually on *Microsoft Teams* in the presence of-

Accused.

Mr. Kanyoko for the accused instructed by Kanyoko & Company Advocates.

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

Mr. Akello watching brief for the victim's family instructed by Sheikh & Shariff Advocates.

Mr. E. Ombuna, Court Assistant.

