



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Magabi & 2 others (Criminal Case E011 of 2022)
[2022] KEHC 16527 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E011 OF 2022
RB NGETICH, J
DECEMBER 20, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

ELIJAH MAGABI 1ST ACCUSED

MAXWELL OKERI NYANGOYA 2ND ACCUSED

GEOFFREY MANYARA MASARE ALIAS SIMON MONDA 3RD ACCUSED

RULING

1. The accused persons herein were jointly charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal code*. The particulars are that the accused persons on diverse dates between 11th and February 12, 2022, at an unknown place within the Republic of Kenya jointly murdered Stephen Kimani Rwege.
2. On July 12, 2022, the charge and its full particulars were read over and explained to the accused persons in the presence of their advocates. They pleaded not guilty. A plea of not guilty was entered on each accused person.
3. The state counsel Mr Gacharia was opposed to the accused persons being released on reasonable bail terms and filed an affidavit sworn on June 28, 2022 by PC Lawrence Owino.
4. Ms Ndegwa, Mr Mwangi and Ms Gathoni counsels for the accused persons informed the court that they intend to file a formal application for bond. Each counsel filed a formal application for bond.
5. The court called for the pre-bail reports. During hearing of bond application, Mr Kasyoka for the state counsel informed the court that he will rely on the affidavit of PC Lawrence Owino which was already filed.



6. The bond application was opposed by the affidavit of PC Lawrence Owino who deponed that there are compelling reasons to deny the accused persons bail. He stated that the accused persons went into hiding after committing the offence and the 1st accused attempted to escape from lawful custody when he was held at Kiambu Police Station.
7. The Investigating Officer further stated that the accused persons' character portray that they are a flight risk and are not likely to attend court for the trial. He further stated that the lives of the 1st and 3rd accused are in danger as the public wanted to lynch them and there is a likelihood of interfering with the witnesses who are close neighbors of the accused persons.
8. Counsels for the 1st and 3rd accused filed written submissions. In submissions dated November 27, 2022, counsel for the 1st accused submitted that he is not a risk flight and that he did not attempt to escape from lawful custody but it was intermittent hallucination and disorientation as a result of the strong medication given after suffering from a mental disorder.
9. Counsel further submitted that when the 1st accused was held at the Kiambu Police Station, he was subjected to extreme and continued torture that led to his mental breakdown and added that no evidence has been adduced by the prosecution to demonstrate that the 1st accused person will interfere with the witnesses. He pleaded with the court to release the 1st accused person on reasonable bail terms as per article 49(1) (h) of the [Constitution](#) as well as the [Judiciary Bail and Bond Policy Guidelines](#) 2015.
10. Counsel for the 3rd accused filed submissions on November 30, 2022. He submitted that the 3rd accused is entitled to a personal bond as per article 49(1)(h) of [Constitution](#) of Kenya and further submitted that the primary factor to be considered by the court as per part 4.9 of the [Bond Policy Guidelines](#) is whether the accused will appear before the trial court if bail is granted.
11. Counsel further submitted that the prosecution has failed to prove that the 3rd accused is a flight risk and the allegation that the 1st and 3rd accused should be detained in custody for their own protection is a mere perception as there is no evidence to that effect. He further submitted that the 3rd accused has underlying health conditions and is on medication and pleaded with the court to release him on bond as the prosecution has failed to adduce sufficient reasons to deny him bond.
12. The pre-bail reports were filed on November 28, 2022. In respect to the 1st accused, the victim's family is opposed to the 1st accused being granted bail/bond. The father of the 1st accused who is the 3rd accused did not comment on the matter. The mother and uncle of the 1st accused are supportive and plead with the court to release the 1st accused on reasonable bail/bond terms. The community and local administration stated that the 1st accused is a law-abiding citizen but could not attest to the behavior of the 1st accused person after he relocated to Nairobi for education.
13. As concerning the 2nd accused person, the pre-bail report indicate that he is a law-abiding citizen. His grandfather is willing to deposit a title for his parcel of land as security in the court. The local administration pointed out that the 2nd accused family is known and they have a good relationship with the community. The community left the decision to the court. From the report, the 2nd accused commit to attend court without fail.
14. The pre-bail report indicates that the 3rd accused is honest and humble person who connects well with the community; that he is a pastor and a church leader; and the community talk good of him. The 3rd accused's family members plead with the court to grant him reasonable bail terms.



15. The victim’s family is opposed to the 1st and 2nd accused persons being granted bail. The victim’s family are still mourning the death of the deceased who was a husband and father of three (3) children. The deceased’s wife is however not opposed to the 3rd accused being granted bond.
16. Article 49(1)(h) of the Constitution provides as follows: -
- “ An arrested 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.”
17. I note from the affidavit of PC Lawrence after committing the offence the accused persons fled from their homes and went into hiding. The Investigating Officer is apprehensive that in case the accused persons are released on bail/ bond they will abscond court. He also informs the court that the lives of the accused persons are in danger, however, this position has not been indicated in the pre-bail report.
18. Record shows that the accused persons herein were arrested on different dates. The 1st accused was arrested on March 17, 2022, the 2nd accused on March 18, 2022 and the 3rd accused was arrested on 2nd March. The offence was committed on diverse dates of 11th and February 12, 2022. The accused persons have not explained their whereabouts during this period. The Investigating Officer indicate that the accused persons went into hiding after committing the crime; he further stated that there is fear of interference of witnesses by the accused person if released on bond.
19. From the foregoing, I find that there are compelling reasons to deny accused persons bond/bail.
- 20.

Final Orders:-

1. Application for bond/bail pending trial is declined.
2. Accused person may renew bond/bail application if circumstances leading to denial of bond/ bail change.
3. Hearing date to be set on priority basis.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 20TH DAY OF DECEMBER, 2022.

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RACHEL NGETICH

JUDGE

In the Presence of:-

Martin – Court Assistant

Ms. Ndegwa holding brief for Mr. Mwangi for Accused 1 and 2

Ms. Gathoni for 3rd Accused

Accused 1 – Present

Accused 2 – Present

Accused 3 – Present

