



REPUBLIC OF KENYA



**Republic v Muterwa (Criminal Case E009 of 2022)  
[2022] KEHC 17001 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 17001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE E009 OF 2022  
GWN MACHARIA, J  
DECEMBER 20, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOSEPH MUNERIA MUTERWA ..... ACCUSED**

**RULING**

1. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. It was alleged that on the 11<sup>th</sup> day of February, 2022 at Gilgil Township in Gilgil sub-county within Nakuru County murdered Geoffrey Omondi Abour. The accused person took plea on May 5, 2022 and pleaded not guilty. The prosecution immediately intimated that they would be opposed to the accused person being granted bail, consequent which the court set down a date for hearing of the instant bail application.
2. The application was canvassed on July 18, 2022. The accused was represented by learned counsel, Mr. Korir whilst the prosecution was represented by learned State counsel, Ms. Kirenge.
3. On the part of Mr. Korir, he submitted that the accused person was a police (*sic*) officer stationed at Gilgil within the jurisdiction of the court and therefore unlikely to abscond trial, that he undertakes to attend court faithfully when required to do so and that in any case, there were no compelling reasons that would warrant the denial of bail to the accused. The final ground on which the application was argued, in my view, has been overtaken by events which is that the accused was then bereaved, having lost his sister.
4. In opposing the application, the prosecution filed an affidavit sworn by Sgt. Hebson Otieno of DCI Gilgil sub-county. The affidavit summarized the submission by the prosecution, which is that; the accused was initially charged with the offence of assault before the Chief Magistrate's Court in Naivasha. He was notified to attend court to take plea on March 21, 2022 but he failed to as a result of



which a warrant of arrest was issued. That the accused was arrested with the help of both the DCI and military officers and presented before the magistrate to take plea. That he is therefore a flight risk and considering that the charge facing him currently is more serious than assault, he is likely to abscond.

5. It was also argued that two of the prosecution witnesses are a close friend and girlfriend respectively of the accused and he is likely to interfere with the evidence they shall give in court. It was thus, the case of the prosecution that the accused should not be released on bail/bond.
6. In rejoinder, Mr. Korir denied that the accused has a girlfriend by the name Keziah Wanjiru aka Ciru as alluded by learned prosecutor. Counsel submitted that since the accused works with the Kenya Defence Force at Gilgil, he should be granted bail with conditions placed on his movements so that he does not interfere with witnesses. On the submission that he absconded court to take plea for assault, counsel submitted that the accused was not aware of the date he was required to attend court, and it was not intentional not to go to court. He promised that the accused would always attend court when and if required to do so.
7. I have accordingly considered the application and the respective rival submissions. It is trite law that the grant of bail to an accused person is a constitutional right that should not be fettered unless there are compelling reasons. This is underpinned in Article 49(1)(h) of the Constitution which provides that:  

“(1) An arrested person has the right-

(h) 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 argument by the prosecution is that the accused is a flight risk and is likely to interfere with witnesses. As for the former assertion, it is on record that the court sought a clarification from the learned prosecutor on the position of the warrant of arrest that was issued by the Magistrate’s Court. She responded categorically that the same was lifted after the court learnt that the accused was not aware about the date he was required to go to court. What this means is that, the submission that the accused deliberately failed to go to take plea is untrue; and the prosecutor too well aware that the warrant of arrest had been lifted, misinformed the court that the accused was arrested on account of deliberately absconding court attendance.
9. On the issue of interference with witnesses, paragraph 10 of the affidavit of Sgt. Hesborn Otieno in opposition to the grant of bail/bond just states that certain crucial prosecution witnesses are close associates with the accused. It does not disclose who these witnesses are and the capacity in which they are close associates of the accused person to the extent that they would interfere with the evidence to be adduced in the case. It was a submission from the bar by the learned State Counsel that, one Keen Stelean Juma and Keziah Wanjiru aka Ciru were a close friend and girlfriend of the accused. I say so because these names were not disclosed in the affidavit. Being a public trial and no disclosure that the witnesses would be protected, the affidavit ought to have named the purported “close friends” of the accused person. The statement of the names of the so close friends of the accused was made in passing and, to me, did not give credence to the averments in paragraph 10 of the afore mentioned affidavit.
10. It is not sufficient to make unsubstantiated allegations that an accused person is likely to interfere with witnesses. It must be demonstrated how his association with such persons discredits his release on bail. With respect to the submission by the prosecutor, this threshold was not met. The grant of bail is a constitutional right to an accused person and the freedom of an accused being so fundamental as he stands innocent until proved guilty, must not be curtailed unless for extremely good reasons. I am not convinced that the prosecution has advanced compelling reasons to warrant a denial of bail to the accused person herein.



11. The upshot of my observations is that the application for bail is merited. The accused person shall be released on a bond of Ksh. One Million (1,000,000/=) with one surety of a similar amount or cash bail of Ksh. 300,000/=. He is ordered not to be in communication of whatever nature with any of the prosecution witnesses failing which the prosecution shall be at liberty to apply for cancellation of the bail/bond terms.
12. It is so ordered.

**DATED AND DELIVERED AT NAIVASHA THIS 20<sup>TH</sup> DECEMBER, 2022.**

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

- 1. Mr. Kipkorir for the Accused.**
- 2. Mr. Michuki for the Prosecutor.**

