



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. E039 OF 2021

PETER KIMUTAI TOO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Accused person filed an application dated 12/10/2021 through his Advocate seeking to be released on bail on reasonable terms pending the hearing and determination of his case.
2. The Respondent opposed the Application and filed an Affidavit dated 14/4/2021 sworn by PC Francis Muchiri, the investigating officer in this case.
3. The parties filed written submissions on the Application which are as follows;
4. The accused submitted that the Constitution of Kenya, guarantees every accused person a right to bond, which right should not be curtailed. He also stated that, the fact that the maximum sentence for the offence of murder is death, has never been a ground for denying any accused person bond.
5. The accused also submitted that contrary to the prosecution's assertions, he is not a flight risk and that no evidence has been tendered to prove that he is a flight risk. The accused also stated that the prosecution has not tendered in evidence that he is at risk of being lynched by the members of the public or the relatives of the deceased.
6. The accused person also submitted that the state has already concluded its investigations, and statements have been recorded and supplied to him, therefore denying him bail on the grounds that he will interfere with the witnesses cannot hold water.
7. The accused relied on the following cases:
 - (i) ***REPUBLIC VERSUS ANTHONY KARANJA NJERU (2016) eKLR;***
 - (ii) ***REPUBLIC VERSUS DANFORD KABANGE MWANGI (2016) eKLR; and***
 - (iii) ***REPUBLIC VERSUS DAVID MUCHIRI MWANGI (2018) eKLR***
8. The prosecution on the other hand submitted that the accused person having committed a felony whose maximum sentence is death is a potential flight risk. The prosecution also submitted that most of the witnesses in the case are well known to the accused person, and there is therefore a likelihood that the accused will interfere with them.
9. The prosecution submitted that there was a risk of the accused person being lynched by members of the public and members of the deceased family, and he should therefore be denied bail.
10. The prosecution relied on the following cases:
 - (i) ***S VERSUS NYARUVIRO & ANOTHER (HB 262-17, HCB 122-17, XREF CRB 1454A-B-17) (2017) ZWBHC 262 (31 AUGUST 2017);***
 - (ii) ***REPUBLIC VERSUS TAIKO KITENDE MUINYA (2010) EKLR;***

(iii) REPUBLIC VERSUS DAVID OCHIENG AJWANG ALIAS DAUDI & 11 OTHERS (2013) ECLR AND;

(iv) REPUBLIC VERSUS FRANCIS KABERIA KIBURI (2018) ECLR

11. The sole issue for determination is whether the accused person should be released on bail pending the hearing and determination of this matter;

12. It is true that the Accused person has a right to be released on reasonable bond terms and the same is guaranteed by the Constitution.

13. However, the Accused person can only be released if there are no compelling reasons to deny him bond. This is provided for in Article 49 (1)(h) of the Constitution, and it states 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.”***

14. The high court in the case of *Republic versus Joktan Mayende & 3others (2012) eCLR*, the court defined compelling reasons as follows: ***“...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.”***

15. In *Republic versus Lucy Njeri Waweru & 3 others*, the high court laid down the applicable principles to be followed by the court in determining whether an accused person should be released on bail, it stated as follows: ***“In considering whether the court will grant bail, the established principles applicable are the following:***

(a) whether the accused persons are likely to turn up for trial should they be granted bail;

(b) whether the accused persons are likely to interfere with witnesses;

(c) the nature of the charges;

(d) the severity of the sentence;

(e) the security of the accused if released on bond;

(f) in case of illness of the accused, the nature and severity of the illness;

(g) whether the accused persons have a fixed abode within the jurisdiction of the court.”

16. The authorities cited by the Accused person’s counsel can be distinguished on the basis that each case is decided on its own merits.

17. In the current case, I find that there are compelling reasons not to grant the Accused person bail.

18. The fact that the Accused person is a flight risk is a compelling reason not to grant him bond.

19. The Application for bail is rejected. The case will be mentioned on 27/1/2022 for pretrial conference and for a hearing date.

20. The Accused person will be remanded in custody until further notice.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 20TH DAY OF DECEMBER 2021.

A. N. ONGERI

JUDGE