



REPUBLIC OF KENYA



**Republic v Mukoiya (Criminal Case E056 of 2024)
[2025] KEHC 246 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E056 OF 2024
AC BETT, J
JANUARY 21, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

VINCENT MUKOIYA ACCUSED

RULING

1. Article 49 (1) (h) of the [Constitution](#) grants an accused person the right to be released on bond or bail on reasonable conditions pending the hearing and determination of his trial. The right to bail and bond is premised on the accused person's right to be presumed innocent until proved guilty and the accused person's right to liberty.
2. In deciding whether or not to grant bond, the court is guided by the following principles:-
 - (a) The right of the accused to be presumed innocent.
 - (b) The accused person's right to liberty.
 - (c) The accused's obligation to attend trial.
 - (d) The right to reasonable bail and bond terms.
 - (e) That bail determination must balance the rights of the accused persons and the interest of justice.
 - (f) Consideration of the rights of the victims.
3. The Accused herein who is charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The offence was allegedly committed on 22nd December 2023 and the Accused was arrested on 29th October 2024 which almost a year later.



4. The Accused pleaded not guilty to the offence and through his Counsel, applied to be released on bond pending trial on the ground that he has a right to bond under Article 49 of the Constitution. Counsel submitted that the Accused is not a flight risk nor likely to interfere with witnesses and is ready to comply with the orders of the court in the event the bond is granted.
5. The Prosecution prayed that the court do order for a pre-bail report in view of the fact that the Accused is faced with two murder charges and the police are apprehensive that his life would be at risk if he is released on bond.
6. Counsel for the Accused opposed the Prosecution's prayer. However, having taken the circumstances into consideration, I ordered that a pre-bail report be filed to assist the court in making its determination.
7. On 10th December 2024, the Senior Probation Officer, Kakamega County filed a pre-bail report in which he recommended that the Accused's application to be released on bond be deferred due to a combination of factors.
8. The pre-bail report raises significant concerns regarding the Accused. It depicts a man who struggles with alcohol and substance abuse who works as a casual labourer. The Accused is said to enjoy strong family ties despite his struggles with poor income and substance abuse.
9. According to the pre-bail report, the victim's family is strongly opposed to the release of the Accused on bond. Their concern stems from the Accused's close proximity to their communities and the fact that the Accused previously attempted to evade arrest and may flee if released on bond.
10. The Accused has poor ties to the community, according to the report. There is latent hostility against the Accused with concerns about the likelihood that he may interfere with witnesses. According to the area Assistant Chief, the allegations that he previously fled to evade arrest has further eroded the community's trust in him who currently lacks a potential surety.
11. In response to the pre-bail report, Mr. Orute, Counsel for the Accused submitted that the report has not availed sufficient evidence to demonstrate that the Accused is a flight risk. Further, there is no evidence that the Accused is engaged in substance abuse. He contended that the right to bond can only be limited where there are compelling reasons that has been proved to a higher standard beyond reasonable doubt. He averred that the Accused has a fixed abode and is ready to comply with the terms and conditions that the court may impose upon him. He relied on the case of Patrick Muthuri Musenda v Republic [2022] eKLR. He urged the court to adopt the same submissions in Kakamega HCCR. Case No E057 of 2024.
12. In rejoinder, Ms. Chala for the Republic submitted that the standard of proof in bond applications is not one beyond reasonable doubt. She submitted that courts have held that there is no scientific method that can be applied to prove compelling reasons in deciding whether or not to grant bond. She contended that the Accused is considered a flight risk. The offence he is charged with was committed in December 2023 while the second offence he is charged with was committed in November 2024. The Accused was at large since December since the first offence until his arrest in November 2024 and is therefore a flight risk.
13. Ms. Chala further submitted that interference with witnesses can be either real or perceived and from the pre-bail report the Accused is perceived to be one likely to be in a position to interfere with the witnesses because he is familiar with them. The Republic also submitted that it is in the public interest that the Accused is not released on bond at this stage since he is said to have criminal tendencies and faces two murder charges.



14. It is well settled that bail or bond can only be denied if there is compelling reason to deny the same. Section 123A of the [Criminal Procedure Code](#) provides as follows:-

- “(1) Subject to Article 49(1)(h) of the [Constitution](#) and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
- (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) should be kept in custody for his own protection.”

15. The Kenya [Judiciary Bail and Bond Policy Guidelines](#) at paragraph 4.26 sets out the considerations to be taken into account in determining whether or not to grant bail as follows:-

- “4. 26 The following procedures should apply to the bail hearing:
- (a) 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, a 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.”

In making its decision, the guidelines state that the court may request for a pre-bail report to assist it make a fair and appropriate decision.

16. The issue to be determined by this court is whether there are compelling reason to deny the accused person bond pending trial. The compelling reasons in this case would be:-
- (a) Whether the Accused is a flight risk.
 - (b) Whether the Accused is likely to interfere with witnesses.
 - (c) Whether it is in the public interest to release the Accused on bond.
17. Bearing the provisions of Article 49 (1) (h) of the *Constitution* and Section 123A in mind, this court is careful to note, that the Accused is charged with two separate offences of murder allegedly committed in December 2023 and October 2024 respectively. The Accused could not be traced after the first offence and was apprehended only after the second offence was committed. The charges facing the Accused are no doubt serious in nature. Considering the fact that the Accused was not arrested until almost a year after the first offence was committed, and taking into account his tenuous community links, it is quite possible that the Accused is a flight risk.
18. With respect to the allegation that the Accused is likely to interfere with witnesses, I find that there is no evidence laid before the court to persuade the court of the likelihood of such interference. From the pre-bail report, the victim’s family did not express fear of such interference. This was expressed by the Assistant Chief. This allegation by the Assistant Chief alone is insufficient to warrant a denial of bond. See *Republic v Dwight Sagaray & 4 others* [2013] KEHC 3824 (KLR).
19. The Republic also averred that it is not in the public interest that the Accused is released on bond because he has been charged with two offences of murder and is likely to commit another offence if released. With respect to this submission, I find no cogent material that the Accused has criminal tendencies and is likely to commit another offence once released. The Accused is entitled to be presumed innocent until strictly proven guilty. No material was placed before the court to prove that the Accused is a habitual criminal or will likely commit another offence. This is mere of speculation and the objection on this ground is unsustainable and I therefore reject it.
20. As earlier stated, the right to bond is not absolute. This court has the ultimate discretion on whether or not to grant bond. The discretion is guided by the legal provisions earlier set out. In the case of *Republic v Danford Kabage Mwangi* [2016] eKLR the court defined the compelling reasons to consider in exercise of judicial discretion in applications for bond as including:-
- “i. The nature of the charges.
 - ii. The strength of the evidence.
 - iii. The gravity of the punishment in the event of conviction.
 - iv. The previous criminal record of the accused, if any.
 - v. The probability that the accused may not surrender himself for trial.



- vi. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.
 - vii. The likelihood of further charges being brought against the accused.
 - viii. Detention for the protection of the accused.”
22. In the present case, the evidence before court is that the Accused evaded arrest for almost a whole year after becoming a suspect in the murder of one Samwel Kipkorir Rotich and was only arrested after a second murder was committed. The Accused is now facing two separate charges of murder which are no doubt serious offences that in the event of convictions, would result in grave punishment. The temptation to flee for such an Accused person will be even higher.
23. In *Republic v Elam Wanjala Sifuna* [2023] KEHC 22379 (KLR), A. C. Mrima J. declined to grant bond to an accused person who had disappeared for a period of six (6) months immediately after the offence was committed and stated as follows:-
- “29. On the ground that the Accused was a flight-risk, it is not in doubt that the Accused disappeared for a period of 6 months immediately the offence was committed. The Accused did not account for that period. Therefore, the possibility of him absconding is not far-fetched.
 31. Having carefully considered this matter and in light of the in-depth analysis of the *Constitution*, the law and various decisions, this Court finds in light of Article 49(1)(h) of the *Constitution* and Section 123A(2)(b) of the CPC, there is a compelling reason in this case such that admitting the accused to bail or bond at this point in time will be prejudicial to the trial. The compelling reason is the possibility of the Accused absconding having previously done so.”
24. I am obligated to consider the circumstances of this case and consider whether the reasons advanced by the prosecution in urging the court to disallow the application for bond constitute compelling reasons.
25. I have carefully weighed the rival submissions and considered the pre-bail report, which is a basis of the fear that the Accused may jump bail due to his previous conduct of disappearing after the offence, I am inclined to agree with the Prosecution that the Accused is a flight risk. The likelihood of one absconding court constitutes a compelling reason to deny the Accused person bail.
26. Accordingly, I make the following orders:-
- (a) That the application that the Accused be released on bond and bail pending trial is declined.
 - (b) That the Accused shall remain in custody for the duration of the trial.
 - (c) That these orders shall apply to Kakamega HCCR. Case No E057 of 2024.
 - d) That hearing in both matters should be expedited.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 21ST DAY OF JANUARY 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution



Mr. Orute for the Accused

Court Assistant: Polycap

