



**Momanyi v Republic (Criminal Case E025 of 2024)
[2025] KEHC 3263 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E025 OF 2024
CW GITHUA, J
FEBRUARY 12, 2025**

BETWEEN

JARED MAKORI MOMANYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Jared Makori Momanyi, faces a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars allege that on 3rd August 2024 at Mariira Farm Village, Mariira location in Kigumo Sub-County within Murang'a County, the accused murdered Benson Kiarie Ng'ang'a.
2. On 18th December 2024, he was arraigned in court and he denied the charges. On the same date, learned counsel Ms. Wangui Wangai who was holding brief for Mr. Ndonga for the accused made an oral application seeking that the accused be admitted to bail or bond on reasonable conditions pending his trial.
3. The application was opposed by the prosecution through a replying affidavit sworn on 19th December 2024 by the investigating officer PC Sanga Tunje. The main reason advanced in opposition to the application was that the accused did not have a fixed place of abode and was therefore a flight risk and if released, he was likely to abscond his trial.
4. At the hearing of the application, learned prosecution counsel Ms. Muriu in her submissions relied on the affidavit sworn by the investigating officer and emphasised that since the accused did not have a fixed abode, it would be difficult to apprehend him in case he was released and failed to attend the court.
5. Mr. Ndonga, learned counsel for the accused who was present during the hearing chose not to make any submissions in response to those made by the prosecution.



6. I have considered the application, the affidavit sworn in opposition thereto as well as the oral submissions made by learned prosecuting counsel, Ms. Muriu. I have also noted the contents of the pre- bail report filed in court on 13th January 2025. It is my finding that the main issue falling for my determination in this application is whether the prosecution has established compelling reasons to warrant denial of the accused's constitutional right to bond pending trial. I say so because under Article 49 (1) (h) of the Constitution of Kenya, an arrested or accused person has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there were compelling reasons not to be released.
7. It is trite that the duty to demonstrate existence of compelling reasons justifying denial of bail or bond rests with the prosecution.
See: R v Danson Mgunya & Another Mombasa Criminal Case No. 26 of 2008; *Patius Gichobi Njagi, Caesar Wachira Muthoni & Mary Njeri Wachira v Republic* [2013] KEHC 2533 (KLR);
8. The Constitution does not define what constitutes compelling reasons and since no two cases can be alike in terms of their facts and circumstances, there is no scientific method or universal measure of determining what amounts to compelling reasons to justify denial of bond. Each case must therefore be considered and determined on their own merit.
9. That said, Section 123A (2) of the Criminal Procedure Code (CPC) as read with The Judiciary Bail and Bond Policy Guidelines 2015 paragraph 4.26 gives guidance on the factors courts should consider when exercising their discretion in deciding whether or not compelling reasons had been advanced to mitigate admission of an accused person to bond pending trial. These factors include the following;
 - i. Whether the accused is likely to fail to attend court proceedings;
 - ii. Whether he was likely to commit or abet commission of a serious offence;
 - iii. Whether he was likely to endanger the safety of victims, individuals and the public;
 - iv. Whether he was likely to interfere with witnesses or evidence;
 - v. Whether he was likely to endanger national security or whether it was in the public interest or accused's own safety to detain him in custody.
10. In this case, the prosecution has claimed that if released, the accused will not attend his trial as he was likely to abscond. The claim is based on grounds that the accused did not have a fixed abode and was thus a flight risk. This claim is buttressed in the pre- bail report filed in court 13th January 2025 which confirms that at the time of his arrest, the accused was a casual labourer engaged in tea picking and had no fixed abode. He used to move from one place to another depending on availability of casual labour.
11. It is instructive to note that the accused did not dispute the claims made both by the prosecution and the probation officer who compiled the pre- bail report either by filing an affidavit indicating his place of abode, if any, or contesting the claims through his counsel during the hearing.
12. As was re-iterated in *Kelly Kases Bunjika V Republic* [2017] eKLR, the primary consideration in an application for bail or bond is whether the accused will avail himself for his trial. Where the prosecution was opposed to bond on grounds that the accused was a flight risk, it would be required to do more than just asserting that the accused was a flight risk. In order to discharge its burden of establishing compelling reasons, the prosecution should adduce credible evidence proving on a balance of probabilities that if released, the accused was likely to abscond his trial.



13. In this case, the prosecution did not need to adduce such evidence because the accused though aware of the prosecution's claim that he did not have a fixed abode and was therefore a flight risk did not dispute that claim. In law, what is not disputed is deemed to be admitted.
14. That said, I have noted in the pre - bail report that accused's brother was willing to accord him accommodation during the trial. However, the said brother has not sworn an affidavit confirming his willingness to take responsibility for the accused. In any event, he was said to be living in a rented house which he can obviously move out at will. It cannot be compared to a permanent residence.
15. For all the foregoing reasons, I am satisfied that in this case, the prosecution has proved on a balance of probabilities that if released, the accused was likely to abscond. I thus find that the prosecution has established compelling reasons to justify denial of the accused persons right to bond pending trial. Consequently, I decline to allow the application but the accused can renew it if in future he manages to secure a fixed place of abode.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 12TH DAY OF FEBRUARY 2025.

HON. C. W. GITHUA

JUDGE

