



REPUBLIC OF KENYA



**Republic v Kihuri (Criminal Case E010 of 2023)  
[2025] KEHC 1834 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1834 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL CASE E010 OF 2023  
AK NDUNG’U, J  
FEBRUARY 20, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MARTIN MWANGI KIHURI ..... ACCUSED**

**RULING**

1. The Accused, Martin Mwangi Kihuri was charged with Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on the 10<sup>th</sup> October, 2019 at Kairi Village in Kieni East Sub-county within Nyeri County murdered Stephen Ngari.
2. Vide an affidavit opposing bail sworn by IP Moses Kibet dated 11<sup>th</sup> November 2024, the state opposes the grant of bail to the Accused.
3. It is deponed that although *the Constitution* makes provision in Article 49(1)(h) for an accused person to be released on bond or bail on reasonable conditions, the right is not absolute but a matter of discretion on the part of the Court.
4. Further, that between 10<sup>th</sup> October, 2019 and 11<sup>th</sup> October, 2019 deceased went missing and was found murdered in his house in Kairi Village on 12<sup>th</sup> October, 2019.
5. Kibet adds that investigations revealed that the accused, who was the deceased’s farm hand and lived with him, was the main suspect of the murder and subsequently the investigations team started looking for him in order to effect arrest on 13<sup>th</sup> October, 2019.
6. According to Kibet the accused fled from his known place of abode in Kairi Village Area and the investigating team made efforts to trace him by engaging local informers and the intelligence Agency to no avail, until finally the accused resurfaced on 6<sup>th</sup> September, 2023, approximately four years later, where he was eventually arrested on the same day.



7. It is urged that by fleeing from his known place of abode and successfully evading arrest for approximately four years, the accused has demonstrated that he is a flight risk and given the opportunity he will successfully flee from the jurisdiction of the court.
8. Further, that other than the place he fled from while evading arrest, the accused does not have any known place of abode or any known familial economic ties and should he be released on bail or bond it would be impossible for the investigating officers to trace him should they be required to do so.
9. That the state witnesses who have recorded statements and are line up to be witnesses are very well known to the accused person since he used to be their neighbor in Kairi Village.
10. That given that the accused already tried to evade justice by going into hiding for four years, there is a reasonable apprehension that if he is released, he will threaten and intimidate the state witness with an aim of preventing them from giving their testimony in this court.
11. It is deponed that this Court has a Constitution duty to balance the rights of all persons and it is their humble submission that this Honourable Court can protect the right that was lost under Article 26 “Right to Life” by providing an enabling environment for the prosecution witnesses to testify without any fear or interference by declining to allow the accused person bail or bond.
12. Further, that accused person herein has been charged with the offence of murder and if found guilty the punishment meted out could be that of the death penalty and therefore there are more probabilities and incentives for the accused person to abscond if released on bail or bond pending trial.
13. Kibet adds that the prosecution has overwhelming and irrefutable evidence that points to the accused’s guilt, thus there is a high probability that the prosecution will secure a conviction. The prosecution is apprehensive that if the accused is released on bail or bond, he may flee the jurisdiction of the Court in fear of being sentenced.
14. The accused made no response to the position taken by the Prosecution.
15. I have considered the material before court. It is clear that the Accused is a flight risk having escaped earlier after the incident and remaining at large for years. Secondly, he has not offered any known fixed abode exacerbating and already bad standing.
16. A compelling reason thus exists that militates against the Accused’s constitutional right to bail. Bail is denied and Accused shall be remanded in custody during the pendency of this trial.

**DATED SIGNED AND DELIVERED THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**A.K. NDUNG’U**

**JUDGE**

