



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gitonga (Criminal Case E025 of 2024)
[2025] KEHC 2157 (KLR) (Crim) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E025 OF 2024
MW MUIGAI, J
FEBRUARY 17, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LAWRENCE NDEGEA GITONGA ACCUSED

RULING

1. On the 18th day of July 2024 the Hon. Judge Kanyi Kimondo ordered as follows:-
 1. I have considered that the homicide occurred a few months ago. The Director of Public Prosecutions informs the High Court that on 2nd March, 2024 at White House Apartments, Thome Area, Kasarani Sub-County within Nairobi County he murdered the deceased.
 2. When I weigh the gravity of this charge, the stage of the trial, I cannot state with any confidence that the accused will not abscond. Secondly, the accused used to reside around the locus in quo. A key witness said to be the proprietor of the subject apartments, and who as in contact with the accused, has expressed fears over her life. A mere relocation order would not adequately secure the witness or her evidence.
 3. The upshot is that there remains strong and compelling reasons for denial of bail. I accordingly decline to grant bail at this stage. However, in the interests of justice, I direct that that this trial shall be fast-tracked. It is so ordered.



Present/ Instant Application

2. On 16th October 2024 the accused through his advocate filed Certificate of Urgency as follows:-

The Advocate having conduct of the Application on behalf of the accused person/applicant herein do certify the instant application to be of utmost urgency and one that merits to be placed before the duty Judge on priority basis on grounds that the accused person/applicant has been in custody since 7th March, 2024 when he was arrested and his previous request to be admitted on bond was declined by the court through a ruling delivered on 18th July, 2024. However, there has been discovery of new issues which affect the life of the accused person to exact, the applicants wife gave birth immediately the accused person was arrested and suffered from a condition after birth and was diagnosed with a mental condition and that the liberty of the accused person will help in bringing up the minor who is now in need of care and protection of the parents. Similarly, the minor's health condition is at stake having been diagnosed with Convulsive disorder and it is indeed an affirmation healthcare of the family lies on the Applicant as the sole bread winner. The Applicant undertakes to abide by the condition this court will impose on him and is willing to deposit his travel documents and appear in court from time to time.

3. On 2nd October, 2024 the accused/Applicant filed Notice of Motion seeking the following orders.

1. That the court reviews /alter the bond terms and admit the accused person to bail pending hearing and determination of the case.

2. That the Court to issue other orders and directions it deems fit in the circumstances.

The application was founded on the following grounds: -

a. That the court in its ruling declined to admit the accused person on bail pending hearing.

b. It has come to the attention of the accused person/applicant that the health of his son and that of his wife are at stake as they have been diagnosed with several ailments and require medical attention.

c. That the accused person's wife has been subjected to mental anguish and has been diagnosed with Postpartum Psychosis and the minor has also been diagnosed with a condition and both require the applicant's presence and support.

d. That the accused person prior to his arrest was running a company and it is at a risk of collapsing hence financial loss.

e. That the father to the accused is willing to house him at home in Nanyuki and stand as a surety upon grant of bail pending hearing and determination of this suit.

i. The accused person undertakes not to contact the witnesses whether by himself or by proxies.

ii. The accused person undertakes not to ever visit the scene of crime or ever step close to Kasarani area until hearing and determination of this case.

4. There is also a medical report dated 4/10/2024 from Pemason Medical Centre (Post-partum Psychosis plus post -partum depression).

5. On 16/10/2024 Supporting affidavit was filed by David Gitonga Ndegea who stated as follows:-



1. That the accused person is his fourth born son.
 2. That as a family they have been having a number of challenges especially in his family where his wife has been diagnosed with Major Depressive Disorder and his son who is around 7 months is having a condition all this require the attention of the applicant.
 3. That he was willing to host the accused person at his home in Nanyuki Laikipia County on Land Reference Number Laikipia/daiga Umande Block 6/359 (nyariginu) and he was willing to be a contact person and avail him whenever required by the court.
6. On 16/10/2024 Supporting affidavit was filed by Esther Wangari Gitonga who stated as follows.
1. That the accused is married to one Ruth Tana and have one issue who was born upon the arrest of his brother.
 2. That the arrest of her husband has seen the wife subjected to a Major Depressive Disorder and is undergoing a medical process.
 3. That the family have agreed to relocate the accused person to their home in Nanyuki under their parents watch.
 4. That their father and her are willing to stand in as contact persons for the accused person.
7. On 16/10/2024 a supporting affidavit was filed by Lawrence Ndegea Gitonga who stated as follows.
1. That he was arrested around 7/3/2024 and charged before this court with the offence of murder contrary to Section 203 as read together with 204 of the [Penal Code](#).
 2. That he is married to one Ruth Tana whom they have been blessed with one issue abbreviated as K.G. N. who was born after my arrest.
 3. That there has been changes in circumstances subject matter of this case and they now warrant him to make an application for review of Bond terms before this court.
 4. That Ruth Tana mother to my son has been subjected to mental anguish out of his incarceration and had been diagnosed with a major depressive disorder due to the major situations she continues to under go.
8. On 28/1/2025 oral application made by Counsel Mr Kamau on review of bond/bail terms of the Accused person and sought leave to file Further Affidavit which this Court granted. The ODPP represented by Ms Tum confirmed service of the instant Application but sought time to respond. The matter was deferred to 5/2/2025.
9. On 5/2/2025, Ms Tum for ODPP stated that with regard to the application for review of bail/bond terms, they wrote to DCI to verify the medical records presented if genuine and they were confirmed as genuine and therefore did not oppose the review of bail/bond to release the Accused person.
10. Mr. Kamau/Mr. Swaka informed the Court that the medical documents presented to Court related to the current condition of his wife and newborn son. The Court was asked to rely on what is on record and in light of new developments review and grant bail/bond terms.
11. Ms. Tum ODPP undertook to file the letters sent to DCI and response that medical documents were genuine. The Court record has no such documents filed to confirm the fact the medical documents are genuine. Skeletal submissions were to be filed and exchanged. Again, none are filed todate.



12. Be that as it may, this Court has considered the new developments the health of mother and child of the Accused person and also the Pre-Bail Report the victim impact assessment and the Investigation Officer's affidavit and finds as follows;

Current practice on application of bail or bond is informed by such factors as:

Nature of the charges, seriousness of the punishment; strength of prosecution's case.; character and antecedents of the accused; failure of accused to honor bail terms previously, likelihood of interfering with witnesses; need to protect the victim of crime and accused person; relationship between the accused and potential witnesses; age of accused; whether Accused person is a flight risk; whether accused person is gainfully employed; maintenance of public order, peace or security.

13. These factors were considered resulting in the Ruling of 18/7/2024.

A review of these orders due to new developments can only be applied in light of all circumstances surrounding the case. The nature of the case is serious, whereas the Accused person may or may not be a flight risk, there is need to protect a particular witness named in the Investigation Officer's Affidavit dated on 8/5/2024 ,who reportedly feared for his/her life and review of bond was granted upon expediting the hearing and have the protected witness(es) testify first. That has not happened yet and no explanation has been given on any challenge to expedite hearing of the matter.

14. Article 49(1)(h) of the Constitution grants bail for all offences, the gravity of the offences notwithstanding. That the presumption of innocence is enshrined in Article 50(2) of the Constitution. Section 123 of the Criminal Procedure Code allows the accused person to request for bail, and the court to grant it. These provisions do not limit the number of times request for bail or bond may be made as was stated in Republic Vs Ahmad Abolafathi Mohammad & Anor 2013 eKLR.
15. The situation in the instant case has not changed, the Affidavit by the Investigation Officer from Kasarani Police Station indicated that the neighbor and/or proprietor of the premises is/are in fear of their lives and in view of these circumstances the Court orders of 18/7/2024 found these to be strong and compelling reasons for denial of bail. The Court directed the Trial to be fast tracked. This has not been complied with as yet and therefore, whereas the rights of all parties should be protected by the law they must also be balanced.
16. The Application for review of bail and/or bond is denied at this stage owing to the safety and security of witness who ought to testify first. Secondly, correspondence between ODPP and DCI on authenticity of medical documents as presented to Court, was not availed to confirm the same and the Court to rely on these medical documents.

RULING DELIVERED SIGNED & DATED IN OPEN COURT IN CRIMINAL DIVISION - MILIMANI/NAIROBI ON 17/2/2025

M.W. MUIGAI

JUDGE

