



REPUBLIC OF KENYA



**Wambui v Republic (Criminal Case E032 of 2024)
[2025] KEHC 2515 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E032 OF 2024
CW GITHUA, J
FEBRUARY 19, 2025**

BETWEEN

PAULINE WAIRIMU WAMBUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Pauline Wairimu Wambui, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. It is alleged that on 7th October 2024 at river Kiama, Mabanda village, Mugumoini Location within Murang'a County, the accused murdered Reign Kanya Wairimu.
2. On 20th December 2024, the accused was arraigned before the court and she denied the charges. Her learned counsel, Ms. Kerubo made an oral application seeking that the accused be admitted to bond on reasonable conditions pending her trial.
3. The application was opposed by the respondent vide a replying affidavit sworn by the investigating officer, PC Roy Kilonzo on 30th October 2024.
4. In the affidavit, PC Kilonzo deposed that the prosecution witnesses in this case were well known to the accused being her close relatives and that if released, there was a high likelihood that the accused will interfere and intimidate them; that releasing the accused will put her life in danger as her relatives and community were still aggrieved by her actions which led to the death of the deceased; that the accused was a flight risk since she did not have a fixed place of abode and given the gravity of the offence, she was likely to abscond court.
5. The deponent further averred that the accused should be denied bond for her own protection given that when she surrendered herself to the police, she was found with rodent control poison and if admitted to bond, she might commit suicide.



6. In response to the depositions made by the investigating officer, the accused swore a replying affidavit on 14th January 2025 wherein she avowed that the offence of murder was bailable under Article 49 (1) (h) of the Constitution; that the Constitution not only guaranteed her a right to be presumed innocent until proven guilty but also a right to freedom and security at the cost of the state as enshrined in Article 29 of the Constitution.
7. The accused further denied the prosecution's allegation that she was a flight risk or that there was animosity against her from members of her family and community. She deposed that she was in good terms with members of her family and community and that they were willing to secure her release and welcome her back home. She denied that if released, she will interfere with witnesses as alleged by the prosecution. In addition, she stated that she was under medication for depression and she was ready to go through follow up clinics.
8. At the hearing, learned prosecution counsel Ms. Muriu opposed the application in her oral submissions and relied on the depositions made by the investigating officer in the affidavit sworn on 30th of October 2024. She urged the court to reject the application noting that the accused had admitted in her replying affidavit that the prosecution witnesses were her close relatives which in her view confirmed that if released, she was likely to interfere with prosecution witnesses.
9. In her response, Ms. Kerubo, learned counsel for the accused reiterated that the accused had a constitutional right to bond pending trial and that the prosecution had failed to demonstrate existence of compelling reasons to justify denial of the accused's right to bond pending trial. She submitted that the reasons advanced by the prosecution in opposition to the application amounted to mere assumptions as they were not based on any evidence. Counsel further asserted that the accused was not a flight risk and she will not be a danger to herself or her community as if released, her mother was ready to live with her and take care of her. She confirmed that the accused was currently on medication for depression.
10. Having considered the application, the affidavits sworn in support and in opposition thereof as well as the rival submissions made on behalf of the parties, I take the following view of the matter:
11. The right to bail or bond pending trial is a constitutional right of every arrested or accused person which is protected in Article 49 (1) (h) of the Constitution of Kenya which provides 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.”
12. From the above provision, it is clear that the right to bail or bond is not absolute and the same can be denied if the prosecution established compelling reasons warranting denial of bail or bond.
13. The phrase compelling reasons was defined by the Court of Appeal in the case of Michael Juma Oyamo & another Versus Republic (2019) eKLR in which the court cited with approval the High Court decision in Republic versus Joktan Malende and 3 Others Criminal Case No. 55 of 2009 wherein the phrase compelling reasons was defined 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 standards set by the Constitution.”
14. In this case, though the prosecution has claimed that the accused was a flight risk and that if released, she was likely to abscond, I find that this claim was completely dislodged by the investigating officer's own admission that the accused was arrested after she surrendered herself to the police. Given this



- undisputed fact and in the absence of evidence to prove on a balance of probabilities that if admitted to bond, the accused was likely to abscond her trial, I find no basis to find that the accused was a flight risk.
15. Regarding the claim that the prosecution's witnesses were accused persons close relatives and she was likely to interfere with them if released, I find that although the accused has admitted that her mother, brother and uncle are indeed prosecution witnesses, this fact by itself does not amount to proof that if admitted to bond, she will interfere with them. The prosecution has not shown how or in what manner the accused was likely to interfere with their evidence.
 16. As I have held before, it is not enough for the prosecution to allege possible witness interference by an accused in opposition to an application for bond pending trial. In order to justify denial of an accused person's constitutional and statutory right to bond pending trial, the prosecution must do more than make unsubstantiated allegations. It must avail to the court credible evidence showing either actual or perceived interference by way of threats or other forms of intimidation or incriminating communication between the accused and the witnesses whether directly or indirectly through proxies. No such evidence has been adduced before this court.
 17. Another reason advanced by the prosecution in opposition to the accused's application is that she should be detained for her own protection since if released, she might harm herself by committing suicide and that her safety may be at risk as members of her community were outraged by her actions and may want to avenge the deceased's death.
 18. In my opinion, the latter reason appears to have been overtaken by events since according to the pre-bail report filed on 3rd February 2025, members of the community in which the accused hails from had changed their attitude towards the accused when they learnt of her mental condition. Their attitude had changed from that of hostility to sympathy and they no longer considered the accused as a threat to their safety. Together with members of the accused's immediate family, they were not opposed to admission of the accused to bond pending trial. Given this finding by the probation officer who conducted social inquiries in this matter which I have no reason to doubt, I find no reason to find that the accused's life or safety may be compromised if she was admitted to bond.
 19. I think it is also important to mention at this juncture that members of the public should be made aware that the fact that a person had been accused of having committed a criminal offence did not automatically mean that he or she was guilty of the offence charged. Rather than taking the law into their hands by threatening the safety of accused persons should they be admitted to bond pending trial, they should wait and allow the law to take its course because under the law, an accused person is presumed innocent until proved guilty.
 20. Regarding the claim that if released the accused was likely to harm herself by committing suicide given the circumstances of her arrest, it is not lost on me that there was a claim that the accused may have been suffering from depression when she allegedly committed the offence. However, the psychiatrist who examined her on 27th November 2024 confirmed in her medical report of even date that the accused was mentally stable but was under medication. From the pre- bail report, the accused's mother has pledged to take responsibility for the accused and live with her if she was admitted to bond and generally take care of her well-being.
 21. In my view, the offer of support to the accused by her mother gives reasonable comfort that if released, the accused will be in good hands and may not be a danger to her own safety. Given the peculiar facts and circumstances of this case, I am persuaded to find that the accused is likely to benefit more from being admitted to bond pending trial than being confined in remand custody. This is so because it is logical to expect that when out on bond, she will get easier access to proper medical attention and being in a homely environment will help her recuperate better and faster.



22. Flowing from the foregoing, I am satisfied that the prosecution has not demonstrated that compelling reasons exists in this case to mitigate against admission of the accused person to bond pending trial. Consequently, I allow the application on terms that the accused will be released upon signing bond of kshs. 500,000 together with one surety of a similar amount. Her mother shall be approved as her surety upon executing a bond of a like amount without depositing any security on condition that she undertakes to live with the accused; ensure that she attends court whenever required; that she continues to take her medication and that she will help her seek treatment if and when necessary. The Hon. Deputy Registrar besides explaining to her the obligations of a surety and consequences of their breach shall record all her contact details and shall retain a copy of her identity card.
23. Upon her release, the accused shall attend mentions before the Hon. Deputy Registrar on every first Monday of each alternate month with effect from 3rd March 2025 until further orders from this court.
24. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 19TH FEBRUARY 2025.

HON. C.W. GITHUA

JUDGE

In the Presence of :

The accused

Ms. Kerubo for the accused

Ms. Muriu for the State

Ms. Susan Waiganjo, Court Assistant

