



REPUBLIC OF KENYA



**Irungu v Republic (Criminal Case E018 of 2024)
[2025] KEHC 4626 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E018 OF 2024
CW GITHUA, J
APRIL 3, 2025**

BETWEEN

NANCY MUNJIRU IRUNGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused person, Nancy Munjiru Irungu faces a charge of murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars supporting the offence allege that on 9th January 2022 at Kianderi Village, Weithaga Location in Murang's County, she murdered Bedan Irungu.
3. The record shows that the accused took her plea on 23rd September 2024 and denied the charges. Her learned counsel Mr. Mwangi subsequently made an oral application seeking that she be admitted to bond or bail on reasonable conditions pending her trial.
4. The application was opposed by the prosecution through the affidavit sworn on 25th July 2024 by the investigating officer PC/W Dorcus Muchiri. One of the main reasons given by the prosecution in contesting accused's admission to bond is that the deceased is accused's child and one of the prosecution key witnesses is her son who she had previously assaulted occasioning him grievous injuries; that if released, she was likely to interfere with the witness. The prosecution also claimed that the accused was a flight risk as she had escaped after the offence was committed and she was arrested two years later on 9th July 2024; that if released, she was likely to abscond her trial. Lastly, the prosecution argued that the accused should continue to be detained for her own security since members of the public were outraged by her heinous act and if released, they might harm her.
5. The accused swore a replying affidavit to respond to depositions made in the affidavit sworn by the Investigating Officer.



She asserted that she had a Constitutional right to be admitted to bond or bail pending trial and a right to be presumed innocent until proved guilty. She also denied the prosecution's claim that she had inflicted serious injuries on her son and that if released she was going to interfere with his evidence. Further she denied the prosecution's claim that she had escaped after committing the offence.

6. The application was argued orally before me on 17th February 2025. Learned Counsel for the accused Mr. Mwangi re-iterated and expounded on the depositions made by the accused in her replying affidavit emphasizing that the prosecution had not adduced evidence to demonstrate that the accused had gone underground after the offence was committed with the intention of escaping the course of justice. He also urged the court to note that the pre-bail report was favourable to the accused pointing out that the report confirmed that members of the public had no problem with the accused and were ready to accept her back in their midst.
7. On her part, learned prosecution counsel Ms Manyal in her submissions besides relying on the depositions made by the Investigating officer emphasized that if released, the accused was likely to interfere with the evidence of her son, a vulnerable witness who was 4 years old at the time the offence was committed. She urged the court to find that the fact that the accused was arrested two years after the incident was proof that she was a flight risk and if released, she was likely to abscond.
8. I have carefully considered the application, the affidavits sworn in support and in opposition thereof and the oral submissions made on behalf of the parties.

I have also read the pre-bail report filed in court on 25th October 2024 as well as the court record.

9. It is trite that under Article 49(i)(h) of *the Constitution*, the accused has a Constitutional right to be admitted to bond or bail pending her trial subject to existence of compelling reasons. It is settled law that where the prosecution was opposed to admission of an accused to bond pending trial, it bears the duty or the burden of demonstrating to the satisfaction of the court that there were compelling reasons to justify denial of the right to bond.

See: Republic V Danson Mgonya & Another [2020] eKLR

10. As I have held many times before, there is no universal standard or scientific method of determining what constitutes compelling reasons to justify denial of bond or bail and each case has to be decided on its own facts and circumstances.

That said, Section 123 A (2) of the *Criminal Procedure Code* as read together with the Judiciary Bail and Bond *Policy Guidelines of 2015* gives guidance on the factors that either singularly or in combination with others may constitute compelling reasons that would mitigate grant of bond or bail depending on the circumstances of each case.

11. Those factors include whether or not the accused was a flight risk and was likely to abscond if released; whether the accused was likely to interfere with prosecution evidence or witnesses; whether the accused was likely to endanger the safety of victims or the public and whether it was in the interest of the accused or in the public interest to continue detaining the accused in custody.
12. In this case, one of the main reasons given by the prosecution in opposition to the application is that the victim in this case is one of the accused's children and if released, she was likely to interfere with his evidence. The accused though not denying that the deceased was her son has denied the prosecution's claim that if released she was likely to interfere with the evidence of its key witness who was also her son.
13. The pre-bail report confirms that the accused's son who is a witness in this case is currently five years old and was living with his grandparents, the accused's parents. The report also confirms that prior to



her arrest, the accused was living with her parents following the collapse of her two marriages. This means that if released, the accused will in all likelihood go back to live with her parents in their home where the prosecution's key but vulnerable eye witness was residing. Given the familial relationship between the accused and the witness being that of mother and son, and given the age of the witness, I am satisfied that the presence of the accused in the same home as the witness was likely to interfere or influence him in the way he was to tender his evidence given his tender years.

14. The fact that the witness on being interviewed by the probation officer stated that he had no objection to the release of the accused on bond provided that she would be warned not to interfere with him or his uncles is clear evidence that the child felt intimidated by the accused and needed protection from her. This in my view buttresses the prosecution's claim that if released, the accused was likely to interfere with the evidence of her son who is said to be an eye witness to the offence subject of the charge in this case.
15. Even without considering the other reasons advanced by the prosecution in opposition to the instant application, I am satisfied that the likelihood of the accused interfering with the evidence of her son constitutes a compelling reason to justify denial of the accused's right to bond pending trial.

In the premises, I decline to allow the application but the accused can renew the same after her son testifies.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 3RD APRIL 2025.

HON. C. W. GITHUA

JUDGE

3.4.2025

In the Presence of :

The accused

Ms. Muriu for the State

Mr. Mwangi for the accused

Ms. Susan Waiganjo, Court Assistant

