



**Republic v Kilerai & another (Criminal Case 2 of 2020)  
[2024] KEHC 432 (KLR) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE 2 OF 2020  
F GIKONYO, J  
JANUARY 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**OLTITI OLE KILERAI ..... 1<sup>ST</sup> ACCUSED**

**TOPIKA OLE KILERAI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons are facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Both counsel for the accused persons filed two separate applications on 21/06/2023. The said applications are premised on articles 49(1) (h), 20, 21,22,23,24,25,27,28, and 29 of [the Constitution](#) of Kenya and supported by the supporting affidavits of the applicants herein.
3. The prosecution opposed the release of the accused persons herein on bail.
4. But, the court noted that both applications sought for orders to compel the in charge at Narok GK prison to supply to this court the treatment notes and medical report for the accused person to aid the hearing and determination of the bond application herein.
5. This request is not strange as it is in the nature of discovery of documents and information held by the GK Prison, Narok which is required for the exercise or protection of a right or fundamental freedom (Access to information, article 35 of [the Constitution](#)). The specific order sought by the applicants is for the prison to provide the court as well as the applicants with treatment notes and medical report on their health which is being held by them to enable the applicants secure release on bond on, inter alia, medical grounds.



6. The constitutional philosophy is that, courts should always take a path towards enforcement of a right and fundamental freedom rather than one which curtails it. This information is relevant factor in these applications (article 20, 21, 22 and 23 of *the Constitution*). Accordingly, the relevant personnel of health for G.K Prison Narok, to provide a medical report on the health status of each of the accused to the court and parties within 14 days of today, indicating the nature of any condition they suffer and whether it is capable of being handled through the established health protocols by the prison authorities. Meanwhile, the court arrests the ruling on bail to await the report called for and parties' submissions thereto.
7. Orders accordingly,

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 23<sup>RD</sup> DAY OF JANUARY, 2024.**

.....  
**HON. F. GIKONYO M.**

**JUDGE**

In the presence of: -

1. C/A Otolu
2. Ms. Rakama for ODPP
3. Tanyasis for 1<sup>st</sup> accused
4. Langat for 2<sup>nd</sup> accused

