



**Republic v Ojeya & another (Criminal Case E089 of 2021)
[2024] KEHC 189 (KLR) (Crim) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E089 OF 2021
LN MUTENDE, J
JANUARY 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

FELIX ONYANGO OJEYA ALIAS FELLO 1ST ACCUSED

WILLIAM OTIENO ONDORO 2ND ACCUSED

RULING

1. Felix Onyango Ojeya alias Fello, 1st Accused, and, William Otieno Ondoro, 2nd Accused, having denied the allegations put forth of committing murder sought to be released on bond/bail pending trial. The application was opposed by the State, through Corporal Choyo who urged that the accused had no fixed place of abode or work, and, if released they were likely to abscond.
2. The Pre-bail reports filed though having recommended release of both accused on favourable bail/bond terms the State through Ms. Ogwenyo questioned their actual place of abode. In the result the court presided over by Githua J. was of the view that it was not clear where the accused were to reside which was a pointer that they were likely to abscond if released on bond which was a compelling reason to justify denial of bond. However, the court ordered that the accused could re-visit the application if they had evidence specifying their place of abode.
3. Through a Notice of Motion dated 4th August, 2022 drawn and filed by the firm of Kiptunge and Company advocates, the accused seek to be released on reasonable terms of bond or bail terms pending determination of the main case.
4. The application is premised on grounds including the fact that the accused/applicants have been in custody since the month of November, 2021, and failure to admit them to bail may amount to a



mutilation of the presumption of innocence envisaged by the Constitution; and, that they have fixed places of abode.

5. The application was disposed through oral submissions. It was urged by Mr. Katunge, learned counsel for the accused that the the accused have specified the place where they will reside as indicated in letters authored by the chiefs in whose area of jurisdiction they were to reside.
6. In response, Ms Ogweno learned Prosecution Counsel, stated that she was satisfied with details provided by the two (2) chiefs, hence upon release the accused should go to Kabondo and Njiru, respectively.
7. The application for bond review is guided by proof of change of circumstances favouring new bond terms. The new terms may lead to enhancement or reduction of bond terms, and, the court can also revoke bond terms depending on the facts presented.
8. The issue at hand is whether the accused are eligible to bail review. Appropriate conditions were set by the court which have been satisfied by the accused herein.
9. The principle is that bond is granted to secure the attendance of the accused, bond must be reasonable since stringent terms that cannot be complied with defeat that purpose and would amount to denying the accused the right to bail as well.
10. Article 49(1)(h) of the Constitution refers to the right to reasonable bond terms. The provision of the law provides thus:
 1. An arrested person has the right—
 - (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
11. However what amounts to reasonable bond terms is not an issue of precision as each case must be determined on its circumstances. The threshold depends on the facts and also the seriousness of the offence, antecedents of the accused must not be overlooked.
12. In the case of Mohamood Chute Wote & 2 others v Republic (2021) eKLR G.L. Nzioka J addressing the issue of the provision of law as provided by Article 49 and section 123 of the Criminal Procedure Code stated as follows:...

“The key word is; “reasonable.” Thus, the question that arises is: what criteria should be used in determining what is reasonable” In my considered opinion, the starting point is the recognition of the fact that, under article 50(2) of the Constitution of Kenya, 2010, every accused person is presumed innocent until proved guilty. The purpose of bail and bond terms is to ensure therefore that the accused attends the trial. Further, the provisions of section 123A of the Criminal Procedure Code provides the relevant circumstances to be considered, including; nature and seriousness of the offence, character of the accused, record of compliance with previous bail and bond terms and strength of the evidence to be adduced.”



13. It is also trite that bond terms though lenient should not form a leeway for absconding. The *Bail and Bond Policy Guidelines* provide that;

“...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person. In the circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each case. See paragraph 3.1 and page 9 of the Bail and bond policy guidelines.”

14. In the instant case the accused face a serious charge, the offence of murder is bailable but it also carries a possible death penalty. An accused stands trial having denied being culpable which means being presumed innocent and thus cannot be adjudged as guilty at this stage. However, the circumstances of each case ought to be treated differently, a life was lost and there may be chances of absconding if terms set are very lenient. The court must not be seen to provide an incentive for absconding and ultimately frustrating the trial which has begun.
15. The upshot of the above is that each accused may be released on Bond of Kenya Shillings Five Hundred Thousand (KES 500,000/-) with a surety in a similar sum.
16. Upon release from custody they are prohibited from going to Njiru-Ageria farm, the place of the incident, until determination of the case. In default, the bond will be cancelled.
17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 18TH DAY OF JANUARY, 2024.

L. N. MUTENDE

JUDGE

In the Presence of:

Messrs. Chiriswa and Isoe for the Applicants/ Accused

Mr Dela for ODPP

