



**Republic v Kabbis (Criminal Case E083 of 2023)  
[2024] KEHC 830 (KLR) (Crim) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 830 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E083 OF 2023  
K KIMONDO, J  
FEBRUARY 2, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CPL NICHOLAS BARASA KABBIS ..... ACCUSED**

**RULING**

1. Learned counsel for the accused made an oral application for bail pending trial. It was opposed by the prosecutor as well as the family of the victim through the affidavit of John Maranya, the investigating officer, sworn on 11<sup>th</sup> December 2023; and, by Evalyne Onzere, the guardian of the deceased dated 19<sup>th</sup> December 2023.
2. On 16<sup>th</sup> January 2024, I heard further submissions from all the learned counsel for the accused, the Republic and the victims.
3. I should add that on 28<sup>th</sup> December 2023, the court received a pre-bail report under the hand of Mercy Kanyangi, the Senior Probation Officer recommending bail on reasonable terms. As I will discuss shortly, the recommendation is not binding on the court.
4. Learned counsel for the accused, Mr. Mayieka, relied on Article 49 (1) (h) of *the Constitution*. He submitted that the accused is still deemed innocent, has a fixed abode, is not a flight risk and has strong family bonds. He argued that the allegations of witness interference are unsubstantiated or mere conjecture. In a synopsis, he contended that there are no compelling reasons for denial of bail.
5. Ms. Kigira, the learned Prosecution Counsel, relied on the replying affidavits above-mentioned. She submitted that the mother of the deceased was contacted by officers from Kabete Police Station, where the accused used to work, who issued thinly veiled threats. In addition, and, noting that the accused is



- a serving police officer, it would only be just that the evidence of some vulnerable witnesses be taken first. She also stated that the safety of the accused was in jeopardy.
6. Mr. Kariuki, learned counsel for the victim's family, associated himself fully with those submissions save to add that in view of the employment of the accused, he may have easy access to intelligence or information that can be used against the witnesses.
  7. I take the following view of the matter. By dint of Article 50 (2) (a) of *the Constitution* the accused is presumed innocent. Further, under Article 49 (1) (h) as read together with section 123A (1) of the *Criminal Procedure Code*, he is entitled to bail unless there be compelling circumstances.
  8. With regard to the phrase compelling reasons, I am well guided by the decision of Gikonyo J in *Republic v Joktan Mayende & 3 others*, High Court, Bungoma, Criminal Case 55 of 2009 [2012] eKLR. I have also paid heed to paragraph 4.9 of the Judiciary's *Bail and Bond Policy Guidelines*.
  9. The overarching objective of bail is to ensure the accused attends trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported). Other relevant considerations include the nature of the charge; the likely sentence; previous criminal records; the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
  10. The *Victims Protection Act* also requires that the views of victim's family be considered at this stage.
  11. When I juxtapose those principles against the materials here, I find further as follows: The accused faces the serious charge of murder. The Information dated 28<sup>th</sup> November 2023 states that on the 8<sup>th</sup> April 2021 near the Safaricom transmitter on Thiongo Road, Dagoretti Sub-County, within Nairobi County, he murdered Nicholas Lifede.
  12. Those remain allegations; and the accused is still presumed innocent. It is however not contested that he is a police officer of the rank of corporal. From the pre-bail report he was employed in the Administration Police in 2006 and has served in various stations including Westlands and Kabete. He is now stationed at Kilimani Police Station.
  13. The mother of the deceased abovementioned, has deposed that she has received visits from some persons urging her to "drop the case" including colleagues of the accused "attached to Kabete Police Station who asked [her] to take great care" or to relocate.
  14. I agree with Mr. Mayieka that the names of those persons or dates are not provided and the evidence may seem scanty. But they remain grave allegations that have not been controverted. Taking into consideration the *locus in quo*, and the employment of the accused, there is a real likelihood of interference with witnesses or evidence.
  15. Furthermore, it is averred by the investigating officer that when the deceased was shot, "members of the public became outraged ....and barricaded roads using stones and tyres". So much so that there was palpable anger which in turn may threaten the safety of the accused. There is no certainty of such an outcome but the court is enjoined to safeguard the security of the accused.
  16. Those are strong and compelling reasons for denial of bail. I thus deviate from the recommendation made by the probation officer to release the accused at this stage. I should add that although the social report makes reference to views of the victim's family, the mother of the deceased, in paragraph 12 of her affidavit, is emphatic that neither her nor any member of the family had been interviewed by the probation officer as of 19<sup>th</sup> December 2023.



17. However, the court must strike some delicate balance that protects the rights of the accused but also ensures that the course of justice is not frustrated. The better course is to take the evidence of the witnesses named as D1 to D3 before releasing the accused.
18. Bail is accordingly denied at this stage. The application may be renewed after the testimony of the above three witnesses. I also direct that that this trial be fast-tracked.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 2<sup>nd</sup> day of February 2024.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read virtually on Microsoft Teams in the presence of-**

The accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Mayieka for the accused.

Ms. Nyagah watching brief for the family of the victim.

Mr. E. Ombuna, Court Assistant.

