



**Republic v Ojja (Criminal Case E029 of 2023)
[2024] KEHC 862 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E029 OF 2023
JK SERGON, J
FEBRUARY 1, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

CORNEL OCHIENG OJJA ACCUSED

RULING

1. Cornel Ochieng Ojja the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). Particulars of the information dated 11th December, 2023, are that between the nights of 26th and 27th November, 2023 at an unknown time at James Finlay (K) Company staff quarters in Belgut Sub - County within Kericho County, the accused murdered Vivian Atieno Onyango. The accused person pleaded not guilty to the offence. The Accused has now applied to this court to be released on bond pending trial.
2. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the Accused Person’s Application for bond for the sole reason that the accused is likely to interfere with witnesses if he is released on bond.
3. Mr. Langat, Learned Advocate for Accused urged this Court to release the Accused on reasonable bond terms, he stated that the Accused Person hails from Siaya County and would abide by the conditions set by this court. The Learned Advocate therefore maintained that there were no compelling reason(s) warranting this court’s refusal to admit the Accused to bail.
4. The County Probation Officer was directed to file a Pre-bail Probation Report within 21 days from the date of the directive.
5. The county probation officer filed a pre bail report, in the said report, it is noted that the accused’s family pleaded with the court to grant favourable bond terms he has a young family that fully depends on him, the accused’s children are in dire need of his attention and financial support as they are still



in school. The family was willing and ready to deposit the requisite security for his release and they would ensure that the accused attends court as required. The accused is an electronic technician who is currently employed by James Finlays (K) Company, he is the section head and supervisor at the Engineering Department. The accused person stated that he was willing to abide by the terms and conditions for release on bond, he would not jeopardise justice or interfere with the witnesses. The home environment was safe and further that his children who are in school fully depend on him for school fees and other necessities. The accused was ready and willing to pursue justice through the court processes.

6. The deceased's family members are bitter towards the accused, however, they did not provide any compelling reason for this court to withhold the accused's release on bond.
7. The probation officer noted that the accused has a fixed abode. The accused's immediate family members and neighbours were willing to post the requisite bond surety for his release. The accused enjoys quality relationships with his family members and has strong community ties, he is not a flight risk or threat to the witnesses.
8. The accused person was well known to the local administrator, has no history of criminality in the community, has strong community ties and relates well with the community members hence they do not oppose his release on bail
9. The probation officer noted that there were no compelling reasons for this court to withhold the accused's release on bond, the probation officer therefore recommended that this accused should be released on bond and attend court while out of police custody.
10. The right to bail is both constitutional and statutory, the accused person has a constitutional right to be released on reasonable bail terms unless there is a compelling reason not to grant the accused person bail.
11. The right to bail is entrenched in article 49 (1) (h) of the Constitution which states 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. As a constitutional right, its enjoyment can only be limited if exceptional circumstances are established. In interpreting the right to bail, section 123A of the Criminal Procedure Code cap 75 Laws of Kenya sets the parameters for the grant of the right to bail.
13. In Republic v John Kabindi Karisa & 2 others [2010] eKLR the court observed as follows; "A murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released." the Constitution does not define the term "compelling reasons". However, there are several High Court cases that have deconstructed the phrase "compelling reasons" in Republic v Joktan Mayende & 4 Others Bungoma High Court Criminal Case No. 55 of 2009, the court defined the term "compelling reasons" 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 standard set by the Constitution." In the case of Republic v Francis Kimathi [2017] eKLR, the court held that: "... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, a compelling reason should be a reason or reasons which is rousing, strong, interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it



draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the *Constitution*.”

14. In the instant matter the prosecution was opposed to the application for bail citing the fact that the accused would interfere with witnesses. I find that the investigating officer did not file an affidavit for this court’s consideration whereas the pre bail report filed by the probation officer is favourable, in the circumstances I find that there are no compelling reasons warranting this court to decline to admit the accused to bail.

(i) The applicant namely: Cornel Ochieng Ojija should be released upon signing a bond of Kshs.300,000/= with one surety of like sum.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 1ST DAY OF FEBRUARY, 2024

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

Accused Person – Present in Person

Miss Chepkorir holding brief for O. Langat for Accuse

