



**State v Ogutu (Criminal Case E006 of 2024)
[2024] KEHC 1136 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E006 OF 2024
DO OGEMBO, J
FEBRUARY 8, 2024**

BETWEEN

STATE PROSECUTION

AND

PETER OTIENO OGUTU ACCUSED

RULING

1. The accused, Peter Otieno Ogutu, has applied to this court under Article 49(i)(h) to be released on bond pending the hearing of his case and determination of the same. The Prosecution has opposed this application on several grounds. Relying on the Affidavit of the Investigating officer Sergeant Ngetich, it was submitted that accused is a flight risk who is likely to abscond if released on bail. That the offence took place on 22-10-2023 and immediately the accused flew to Nairobi and efforts to arrest him was futile and only came back to Siaya to sign the agreement of sale. That it is the same land that led to the deceased being murdered.
2. Counsel for the State also relied on the Probation officer's Prebail report annexed.
3. In response, counsel for the accused submitted that accused is entitled to bail irrespective of the nature of the offence. And that there is no evidence that accused fled the scene and that the place of abode of the accused is clearly indicated as Lucky Summer, Nairobi. That accused has no travel document that would facilitate his travel out of the jurisdiction of the court. That in any case, he has never failed to honour any summons to attend court.
4. It was further submitted that no OB number has been shown to confirm, any complaint or that there would be public outcry should accused be released on bond. Also that accused is innocent till proved guilty.
5. Counsel also challenged the issue of threats to any witness since the defence do not even know the witnesses as their statements have not been supplied that accused is a law abiding person with no



intention of running away. And relying on *Christopher Kyalo -Vs- R* [2021]eKLR, it was submitted that it is the duty of the State to ensure the security of the applicant and citizens generally. The court was asked to consider any way that would minimize the denial of bail.

6. I have considered the submissions herein made by both the Prosecution and the defence sides. I have also perused the Affidavit filed by the investigating officer in opposition to the release of accused on bail and also the Affidavits of the accused, Isaac Oduma Oyugi, and Lilian Achieng Ogutu, filed in support of the application of the accused. I have also considered the pre-bail report filed by the Probation Officer regarding this matter.
7. This is an application for bail pending trial. Article 49(i)(h) of the *Constitution* provides:

“An arrested person has a 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.”
8. The above provision of the *Constitution* guarantees the right to bail to all accused person irrespective of the nature of the charges that they face. It otherwise limits the right to the extent that should compelling reasons be shown to exist by the Prosecution, then the right to bail may be denied. The right to bail is therefore not an absolute right. It is a right that may be denied should compelling reasons be shown to exist.
9. Simply put, these are reasons that are good enough or strong enough as to justify the denial of the right.
10. It must be stated from the onset that the right to bail has the sole purpose of affording an accused person the opportunity to stay at home and conduct his daily normal life activities while at home even as his case is heard by the court.
11. It affords an accused person the chance to go through his trial while he is not in incarceration in remand custody. It is not a licence for the accused to run away to avoid his trial or to avoid his accusers in court. Neither is it an opportunity for the accused to intimidate, influence or interfere with Prosecution witnesses and in the process frustrate the progress of the prosecution case against him.
12. In effect therefore the 2 major considerations the court must make in this matter are:-
 - i. Whether the accused is a flight likely to abscond if released on bail.
 - ii. Whether the accused is likely to interfere with prosecution witnesses if released on bail.
13. Regarding the first issue, I have considered the submissions of the parties and also the Probations officer’s report. This offence allegedly took place on 22-10-2023 and it was not until sometime in January 2024 that he was arrested. The Prosecution has submitted that all this time, he had escaped from being arrested and that this shows that he is likely to abscond if released. It is whoever on record that accused habitually resides in Lucky Summer, Nairobi. His absence from Rarieda, where the crime took place may therefore not mean that he had escaped. For this reason, I am not convinced that the Prosecution quite proved this ground as a compelling reason.
14. On the 2nd ground of likelihood of interference with witnesses, whereas it has been submitted that accused is unlikely to interfere with the Prosecution witnesses, this court has noted the contents of paragraph 10 of the Affidavit of the Investigating officer, that some witnesses have been intimidated and that release of accused on bond is likely to contact the key witnesses and inflict fear on them. Attached to the Affidavit are extracts of the Occurrence Book at Ndori Police Station, Nos 09/31/1/2024 and 11/31/01/2024, conforming the reports that witnesses have made regarding threats they have received. I have gone through these OB extracts and I am convinced that they confirm real threats to



the Prosecution witnesses regarding this case. I am convinced therefore that if released, on bond, the accused will continue to intimidate and influence these prosecution witnesses.

15. This court has a duty to ensure that the rights of accused persons as well as those of the Prosecution witnesses are protected. For the Prosecution, this court has a duty to ensure that the Prosecution evidence and witnesses are brought to court and preserved without any hindrance. This court would be failing in its duty if orders the release of the accused on bail only for the threats for the Prosecution witnesses to escalate or be actualized.
16. In the circumstances, I am convinced that the Prosecution has proved this limb as a compelling reason that would justify the denial of bond to the accused at this stage of the trial.
17. To safeguard the evidence of the Prosecution, therefore, I hereby dismiss this application of the applicant for bail. I order that the accused shall be remanded in custody pending the hearing and taking of the evidence of the 3 witnesses of the Prosecution. The accused shall be at liberty to renew his application for bail after the evidence of these witnesses (to be declared by the Prosecution) are taken by the court. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 8TH DAY OF FEBRUARY, 2024

D.O. OGEMBO

JUDGE

8. 2.2024

Court:

Ruling read out in Open court in presence of accused, Mr. Okanda for accused and Ms. Mumu for State.

D.O. OGEMBO

JUDGE

