



REPUBLIC OF KENYA



**Karanja v Republic (Criminal Case 5 of 2017)  
[2024] KEHC 2755 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 5 OF 2017  
CW GITHUA, J  
MARCH 13, 2024**

**BETWEEN**

**CHARLES MAINA KARANJA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein, Charles Maina Karanja, faces a charge of murder. Through a Notice of Motion dated 14<sup>th</sup> December 2022, he approached this court seeking to be released on bail or bond on reasonable terms pending the hearing and determination of his trial.
2. The application was opposed by the respondent through an affidavit sworn on 11<sup>th</sup> December, 2023 by the investigating officer Chief Inspector Samuel Kinoti . The respondent contended that the charge the applicant was facing was serious in nature, and as such, if released, his security may not be guaranteed; that he may abscond and further, he was likely to interfere with its key witness one Nahashon.
3. The application was canvassed by way of oral submissions. Learned counsel, Ms. Gachango, represented the applicant and informed the court that the applicant has been in custody since 2017 and for all that time, his case has not kicked off. She contended that the applicant was the sole bread winner for his family and that his children have since dropped out of school for lack of school fees.
4. It was her further submissions that the applicant has a right to be released on bond pending trial and that there were no compelling reasons to warrant his continued detention; that he had a fixed abode and if granted bail, he will live with his brother in Nairobi. In addition, counsel asserted that the accused was not a flight risk and if released, he will attend court whenever he was required to do so and will not interfere with witnesses.
5. On her part, learned prosecution counsel, Ms. Muriu, in her opposition to the motion relied on the affidavit sworn by C. I Kinoti and further submitted that there were compelling reasons to justify denial



of bond to the accused since if released, he was likely to interfere with their Key witness, Nahashon Mwangi, who was his relative which would prejudice the prosecution case and deny the victim's family justice.

6. It is trite that under Article 49 (1) (h) of the [Constitution](#), an accused person has a right to be released on bond or bail on reasonable conditions, pending a charge or trial, unless there were compelling reasons not to be released.
7. What amounts to compelling reasons depends on the facts and circumstances of each case since there is no standard definition of the term which can fit every case. However, it is clear to me that that to be compelling, the reasons advanced by the prosecution in opposition to an application for bond must be strong, cogent, credible and convincing in a way that satisfies the court that admitting the accused on bond would compromise the ends of justice. Spurious and unsubstantiated allegations will not therefore suffice.
8. Section 123 A of the [Criminal Procedure Code](#) and the [Judiciary Bail and Bond Policy Guidelines](#) have given examples of what may constitute compelling reasons to justify denial of bond if established to the satisfaction of the court. These includes claims that the accused was a flight risk; that he was likely to endanger the safety of victims, individuals or the public; or that he was likely to interfere with witnesses or evidence; or he should be kept in custody for his own protection.
9. That said, the overarching consideration in deciding whether or not to allow an application for bond pending trial is whether if released, the accused would attend his trial at the specified time or will abscond. Therefore, the first question the court should ask itself is whether the prosecution had demonstrated by cogent evidence that there was a real possibility that if the application was allowed, the accused was likely to abscond his trial and if the answer was in the affirmative, then there would be no point to consider any other reason offered in opposition to the application. If, however, the answer was in the negative, then the court would be dutybound to examine all the other reasons presented to object to the application to determine whether or not they were compelling to justify curtailment of the accused person's constitutional right to enjoy his or her liberty while awaiting conclusion of the trial.
10. In this case, the main reason given by the prosecution to contest admission of the accused to bond is that if released, he was going to interfere with its key witness who was also a relative. The prosecution did not however substantiate this claim with any evidence or lay any basis for its apprehension. In answer to this claim, I will do no more than to reproduce what my sister Korir J stated in [Republic V Dwight Sagaray & 4 Others](#) (2013) eKLR that

“.....interference with prosecution witnesses is in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the trial and is an affront to the administration of justice. For the prosecution to succeed in persuading the court on this criteria however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others....”
11. I must point out that in my view, the fact that the prosecution's key witness and the applicant were relatives does not automatically mean that the applicant was going to interfere with the said witness. For such a reason to have any weight, it must be backed by evidence that the applicant had previously either directly or through proxy attempted to reach out to the prosecution witness to either intimidate or threaten him with the aim of ensuring that he did not attend court to testify or to give his evidence in a particular way.



12. In view of the foregoing, am satisfied that the prosecution has failed to demonstrate that they were compelling reasons in this case to militate against admission of the accused to bond as prayed. It may also be important to note that even where there was a reasonable apprehension that if released an accused person was likely to interfere with witnesses, it may not be a good reason to deny an accused the exercise of his or her constitutional right to bond or bail if it was possible to counter such likelihood with imposition of appropriate bond terms.
13. In this case, to allay any fears the prosecution may have regarding the likelihood that he may interfere with its main witness if his application was successful, the accused has offered to live with his brother in Nairobi which means that he does not need to go back to the area in which the incident occurred where it would be possible for him to interact with the said witness.
14. Having taken all relevant factors into account and in order to remain on the side of caution, I find merit in the instant application and I hereby allow it on the following terms:
  - i. The accused shall be released upon executing a personal bond of Kshs. 300,000 together with one surety of a similar amount. The surety will be approved by this court's Deputy Registrar.
  - ii. The accused shall not reside in Githima Location for the duration of the trial and shall not contact or interfere with any of the prosecution's witnesses whether directly or indirectly.
  - iii. The accused will attend court whenever required.
  - iv. In default of compliance with any of the above conditions, the accused's bond will be cancelled.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 13<sup>TH</sup> DAY OF MARCH 2024**

**C.W. GITHUA**

**JUDGE**

**In the presence of :**

The accused

Ms. Kinyua holding brief for Ms. Gachengo for the Accused

Ms. Muriu for the respondent

Ms. Susan Waiganjo Court Assistant

