



**State v Monene (Criminal Case E013 of 2023) [2024] KEHC 2938 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2938 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE E013 OF 2023**

**TA ODERA, J**

**MARCH 7, 2024**

**BETWEEN**

**STATE ..... PROSECUTOR**

**AND**

**JEFFERSON MOMANYI MONENE ..... ACCUSED**

**RULING**

1. The Accused Person has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The accused was denied bond on 27. 6. 23 by Hon Justice Gichohi on the ground that his life was in danger if released on bond based on the pre-bail report dated 3.5.23 filed in court.
3. Filed on 21.2.24 and it indicates that the accused is fit to be released on bond. Also that the mother to the deceased ran away from home to an unknown place, when she got wind that accused is going to be released. This is supported by the grandmother to the deceased. I note that this court ordered for filing of pre-bail report and the same was this fear was also expressed in the initial pre-bail report dated 3.5.23 in which it was stated that accused was sending information that the mother to deceased should not step into court. Although it is said in the report that accused will live in Nairobi and his life will not be in danger anymore which I agree with, the issue of threat to the said witness has not been addressed. security of witnesses is of paramount importance and this court has a duty to protect them. Out of abundance of caution, it would be just and fair that the evidence of the main witnesses be taken first before accused can be released. It is so ordered.
4. In the case of Joktan v Mayende & 4 others Bungoma High court criminal case No 55 of 2009 compelling reasons were defined as follows; ‘and accordingly, 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.’



5. In the case of *Republic v Francis Kimathi* [2017] eKLR it was held “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, 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*.

The bond /bail guidelines which provide that for factors to be considered in an application for bond which are:

- a. The right of accused person to be presumed innocent.
- b. Accused Person’s right to liberty.
- c. Accused’s obligation to attend trial.
- d. Right to reasonable bail and bond terms.
- e. Bail determination must balance the rights of the accused persons and the interest of justice.
- f. Consideration for the rights of victims.

Counsel argued that denying accused bond on the ground that the memories are still fresh would amount to convicting him before the case is heard. Further that section 123A of the *CPC* lists, nature or seriousness of the offence, the character, antecedents, associations, community ties of accused, defendant’s records of fulfilment of previous bond terms and the strength of evidence. He urged a foregoing factors and grant accused bond.

### **Determination**

6. I have considered the application for bond and the pre-bail report
7. Article 49(1)(h) of the *Constitution* provides that 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.
8. Paragraph 3 of the *Bail and Bond Policy Guidelines* sets out the general principles that shall guide the process of bail and bond decision-making. They are as follows: -
- a. The right of accused person to be presumed innocent.
  - b. Accused Person’s right to liberty.
  - c. Accused’s obligation to attend trial.
  - d. Right to reasonable bail and bond terms.
  - e. Bail determination must balance the rights of the accused persons and the interest of justice.
  - f. Consideration for the rights of victims.
9. Indeed, the primary consideration is whether the accused person will appear for trial if granted bail. (Section 4.9 of the *Bail and Bond Policy Guidelines*)
- Also see *Republic v Danford Kabage Mwangi* (2016) eKLR;
10. The following factors, which are by no means exhaustive, should be considered:



- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
  - b. The strength of the prosecution case.
  - c. Character and antecedents of the accused person.
  - d. The failure of the accused person to observe bail or bond terms.
  - e. Likelihood of interfering with witnesses.
  - f. The need to protect the victim(s) of the crime.
  - g. The relationship between the accused person and potential witnesses.
  - h. Child offenders.
  - i. The accused person is a flight risk.
  - j. Whether accused person is gainfully employed.
  - k. Public order, peace or security.
  - l. Protection of the accused person.
11. Indeed, Section 123A of the [Criminal Procedure Code](#), Cap. 75 of the Laws of Kenya, provides for the considerations that a Court should have in mind when considering an application for bail or bond. They are:
- a. The nature and seriousness of the offence;
  - b. The character, antecedents, associations and community ties of the accused person;
  - c. The defendant's record in respect of the fulfillment of obligations under previous grants of bail; and
  - d. The strength of the evidence of his having committed the offence.
12. These conditions were restated in the cases of [Republic v Daniel Ndegwa Wachira](#) [2015] where Justice Mativo (as he then was) referred to the case of the Supreme Court in Nigeria in [Alhaji Mujabid Dukubo-Asari v Federal Republic of Nigeria](#) SC 20A/2006; the Court of Appeal case of [Michael Juma Oyamo & another v Republic](#) [2019] eKLR pronounced itself as such; and the case of [Mkirani v Republic](#) (Criminal Appeal E010 of 2021) [2021] KEHC 300 (KLR) (3 December 2021) (Ruling) where Justice Mativo (as he then was) referred to the case of the Supreme Court of India in [Krishnan v The People](#) {SCZ 19 of 2011}, {2011} ZMSC 17 which Court laid out similar conditions to be considered in an application for bail pending the hearing of an appeal.
13. In all these, the common denominator is that it is for the prosecution to establish the existence of these compelling reasons. See Paragraphs 23 and 28 of the Court of Appeal case of [Michael Juma Oyamo & another v Republic](#) [2019] eKLR
14. The 2<sup>nd</sup> pre-bail report filed on 21.2.24 and it indicates that the accused is fit to be released on bond. Also, that the mother to the deceased ran away from home to an unknown place, when she got wind that accused is going to be released. This is supported by the grandmother to the deceased. This court ordered for filing of pre-bail report and the same was this fear was also expressed in the initial pre-bail report dated 3.5.23 in which it was stated that accused was sending information that the mother to deceased should not step into court.



15. Although it is said in the report that accused will live in Nairobi and his life will not be in danger anymore which I agree with, the issue of threat to the said witness has not been sufficiently addressed. Security of witnesses is of paramount importance and this court has a duty to protect them. It is clear that there is no change of circumstances out of abundance of caution, it would be just and fair that the evidence of the main witnesses be taken first before accused can be released. Hearing on 25.7.24 witnesses be availed.

16. It is so ordered.

**DATED, DELIVERED AND SIGNED AT KISII THIS 7<sup>TH</sup> DAY OF MARCH 2024.**

**TERESA ODERA**

**JUDGE**

**In the presence of:**

Mr. Koima for the State

Accused Person present

Oigo- Court Assistant

