



REPUBLIC OF KENYA



Kamau v Republic (Criminal Case 11 of 2020) [2024] KEHC 3774 (KLR) (3 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 11 OF 2020
CW GITHUA, J
APRIL 3, 2024**

BETWEEN

NELSON NGIGE KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Nelson Ngige Kamau, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He denied the charges and two applications were subsequently made one by his learned counsel Ms. Kimani and the other by the accused in person seeking that he be admitted to bond pending trial.
2. The court record shows that the application made by Ms. Kimani was later withdrawn on grounds that a pre- bail report filed in response thereto was unfavourable to the accused. The second application filed by the accused in person was also withdrawn on application by Ms. Kimani on grounds that it was improperly drawn.
3. The application subject of this ruling is the oral application made by Ms. Kimani on 27th November 2023. Ms. Kimani urged this court to compare the initial pre-bail report filed on 21st September 2020 and the subsequent one filed on 23rd November 2023 and grant the accused favourable bond terms.
4. The application was opposed by the respondent through an affidavit sworn by the Investigating Officer, PC Sanga Tunje on 27th February, 2024. PC Tunje deposed that the applicant was a flight risk given that after the incident, he fled to unknown destinations and was only arrested six months later in his home and that if released , he was likely to abscond. He further deposed that the charges the applicant was facing were serious in nature and if released, his security may not be guaranteed; and, he may interfere with prosecution witnesses since they hail from the same locality.



5. It is trite that under Article 49 (1) (h) of the *Constitution of Kenya*, 2010, an accused or 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.
6. As evidenced from the above constitutional provision, whereas an accused person has a constitutional right to be released on bail or bond pending trial, the said right was not absolute and may be curtailed where the prosecution demonstrated existence of compelling reasons warranting denial of that right.
7. As to what constitutes compelling reasons, there is no universal or scientific method to measure reasons advanced in opposition to bond in order to determine whether they qualified to be compelling reasons within the meaning of Article 49 (1) (h) of the *constitution* given that no two cases can be alike and consequently, each case must be determined on its own facts and circumstances. That said, the phrase compelling reasons in my opinion must refer to reasons which are strong, forceful and plausible and which convinces the court that it would be in the interest of justice to deny an accused person bail. Spurious reasons or unsubstantiated allegations will not therefore suffice.
8. Some of the factors that the court should consider when exercising its discretion in deciding applications such as the one before me have been set out in Section 123A of the *Criminal Procedure Code* and The *Judiciary Bail and Bond Policy guidelines*, 2015 . These includes the following:
 - a.) Whether the accused was likely to fail to attend the court for his trial.
 - b.) Whether the accused was likely to commit, or abet the commission of, a serious offence.
 - c.) Whether the accused was likely to endanger the safety of victims, individuals or the public or was likely to interfere with witnesses or evidence.
 - d.) Whether the accused was likely to endanger national security;
 - e.) Whether it was in the public interest to detain the accused in custody for his own protection.
9. Though all the above factors are relevant and important considerations in determining bail applications, the all-encompassing consideration that should guide the court in the exercise of its discretion in these matters is whether there was any possibility that if released, an accused person was likely to abscond and fail to turn up for his trial. This is so because if an accused person absconded, it would be impossible to conduct a trial and this would defeat the very essence of the administration of criminal justice.
10. In the present application, the main reason advanced by the prosecution in its opposition to the accused's prayer to be admitted to bond is that the accused was a flight risk given that he fled to an unknown destination and was arrested in his house after six months. This claim is borne out by the court record which shows that the offence was allegedly committed on the night of 25th and 26th day of December, 2019 and the accused was arraigned in court on 2nd June 2020.
11. Be that as it may, I have noted that the applicant has been in lawful custody for a period of about 3 years and 9 months, that is, since he was arrested and for reasons which are not clear on record, his trial is yet to commence. It is important to point out that under Article 50 (2) (a) of the *Constitution*, an accused person has a right to a fair trial, which includes the right to be presumed innocent until proven guilty. This means that the accused person still enjoys his right to the presumption of innocence and if he is denied bail and continues to remain in custody for a further indefinite period, if at the end his trial he is found innocent, he will be greatly prejudiced.



12. It is however not lost on me that the prosecution's claim that the accused went underground for six months after the offence was committed was not contested but this notwithstanding, there is evidence that the accused has a fixed abode and his home is known to the investigating officer since this is where he was arrested from. The pre-bail report filed on 23rd November reveals that the accused was a polygamous man who lived in the said home with his two wives and six children. In the circumstances, the possibility of the accused absconding if released on bond may be very slim.
13. In the circumstances of this case, instead of denying the accused bail as submitted by the prosecution, i am inclined to exercise my discretion and allowing the application but on stringent conditions which will ensure that he did not abscond his trial. The application is therefore allowed on the following conditions;
- i. The accused will be released upon signing bond of Kshs. 500,000 together with one surety of a similar amount. The surety will be approved by the Deputy Registrar of this court.
 - ii. Upon being released, the accused will be attending mentions before the Deputy Registrar once every month until further orders from this court.
 - iii. The accused shall also attend this court on all hearing dates without fail.
 - iv. In default of compliance with any of the above conditions, the accused's bond will be cancelled.
- It is so ordered.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 3RD DAY OF APRIL 2024.

In the presence of :-

The accused

Ms. Kimani for the accused

Ms. Muriu for the respondent

Ms. Susan Waiganjo , Court Assistant

