



**Republic v Sawe (Criminal Case E017 of 2023)
[2024] KEHC 4256 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E017 OF 2023
F GIKONYO, J
APRIL 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAIAH KIBET SAWE ACCUSED

RULING

1. Ms. Atieno counsel for the accused person orally applied for the accused person to be released on reasonable bond terms. She argued that the accused would abide by all the terms.
2. Ms. Mwaniki prosecution counsel opposed the application for reasons that there are compelling reasons in the investigating officer’s affidavit filed.

Analysis and Determination

Right to bail

3. A person charged with a criminal offence is entitled to be released on bond on reasonable conditions except where there is a compelling reason not to be so released (art. 49(1)(h) of the Constitution of Kenya, 2010). Thus, making all offences bailable. The logic here is premised upon the right to be presumed innocent until the contrary is proven (R. vs. Richard David Alden (2016) eKLR.)

Compelling reason and burden of proof

4. The prosecution bears the onus of proving compelling reasons under Article 49(1)(h) of the Constitution- these are reasons that justify the limitation of the right to liberty in the context of Article 24 of the Constitution.



Objective of bail

5. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial (*Muraguri v Republic*).

Grounds for objecting bond

6. The prosecution cited two grounds on which they opposed bail; i) safety and security of the accused person, and ii) witness interference.

Security and safety of the accused person

7. The investigating officer in his affidavit stated that the situation on the ground is hostile thus the accused's life may be in danger as the local community is angered about the death of the young lady. The accused's two sons namely Haron Bett and Shadrack Rono who are still at large unlawfully assaulted Naomi Chelagat (the deceased) occasioning her serious injuries an act which eventually led to her death. Upon arrest of the accused, the other two suspects who are her sons and are still at large and the efforts to trace them are still on course.
8. The defence *vide* the assistant chief's letter dated 30/01/2024 stated that the accused resides on his father's land in Tendwet Narok County.
9. The mother of the accused, Grace Chepkorir Mosonik filed a further affidavit stating that before the accused relocated, the accused resided in Chepkitwal Bomet where he stayed with her until he left home on a quest to seek greener pastures. For that reason, the accused has a home far from where the incident occurred and safe from being attacked by the local community as alleged by the investigating officer
10. Be that as it may, claims that, if granted bond, the safety and security of the accused might be in jeopardy, is disturbing, especially because Kenya is governed by the rule of law; and prides on a robust Bill of Rights which includes right to be presumed innocent until proven guilty.
11. Anger upon the members of the family of the victim of murder or the respective community where the deceased came from, due to the heinous killing of their kin or member, comes naturally. But, should be soothed by among other things, bringing the accused to book through, and participating in the due process toward justice for the victims.
12. It is possible, amidst sorrow, to be moved by a sense of duty, and an abhorrence of the outrageous and heinous act of the culprit without necessarily craving for revenge. This helps the family to courageously regain their dignified mood and cool whilst dealing with their loss of kin, thus, getting quite apt healing and solace.
13. This may seem something of the humorist or incongruence, but solace does not come through revenge or further letting of blood. Such craving is criminal and only breeds harm and death; and more pain. It is never a basis for denying an accused person his natural right to life arbitrarily or his constitutional right to liberty pending trial. Care must be taken not to elevate the ground of threat to the security of the accused by the members of the public or the victim's family as to inadvertently encourage, promote, or condone violence, disorder, and usurping of law by individuals or groups of people.
14. In any case, the state has to ensure the safety and security of its citizens including the accused person. The police should take appropriate measures to ensure the security of the accused persons.



15. Therefore, this court finds the argument on the security and safety of the accused to be without any factual basis and is rejected.

Interference with witnesses

16. The prosecution alleged the likelihood of interference with prosecution witnesses. Interference with witnesses is an affront to and impeaches the integrity of the trial. Thus, justifiable reason to limit the right to liberty (*R. vs. Patius Gichobi*, article 24 of the [Constitution](#))
17. See also a work of the court in [R. vs. Jaktan Mayende & 3 others](#), that:

“...In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general as envisioned by the people of Kenya in the Preamble to the [Constitution](#) of Kenya 2010.....Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give skewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”
18. However, the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond ([R. vs. Dwight Sagaray & 4 others](#), 2013 eKLR)
19. PC Amos Mariech averred that the accused is likely to interfere with witnesses who are his close relatives and neighbours and they have expressed fear that they will not be able to freely testify if the accused person is released.
20. The defence responded that the accused’s family home and where the incident occurred and where the witnesses reside are not close hence he will not interfere with witnesses as alleged by the investigating officer.
21. To this submission, this court states, that; the incidence of global village hosted by wireless and almost boundless technology, which has been used in harmful hacking, cybercrimes, cyber bullying and threats etc., makes it possible for one to reach another without any physical movement closer to the person; at the touch of a button. Therefore, physical separation, does not mean a person cannot interfere with another’s health, quiet, peace and tranquility.
22. It is not far-fetched or unfounded that, the presence of the accused person amid such neighbours and close relatives who are witnesses of the commission of the crime for which he is accused, makes such witnesses vulnerable to harm, intimidation, harassment, fear, tampering, blackmail, and abuse by the accused person. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions.
23. It is, therefore, appropriate that these victims should be free from harm, intimidation, harassment, fear, tampering, blackmail, and abuse by the accused persons. It is also not lost to the court that the safety of victims is to be considered in determining bond issues.



24. Consequently, the prosecution has proved that the accused is likely to interfere with the witnesses herein.
25. In light thereof, emphasis is on the court's duty to ensure that the integrity of the trial is not prejudiced by unlawful acts of the accused such as interference with witnesses. The integrity of the trial guarantees fair trial (*R. vs. Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No. 57 of 2016 (2016) eKLR and *K K K vs. Republic* [2017] eKLR).

Conclusion and Orders

26. In conclusion, this court finds there is a compelling reason not to release the accused person on bail. The accused will remain in custody during the hearing of the case. Meanwhile, the vulnerable witnesses to testify after which bond issues may be revisited. In light thereof, this court directs the hearing of the case to be fast-tracked.
27. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 16TH DAY OF APRIL, 2024.

HON. F. GIKONYO M.

JUDGE

In the presence of: -

1. Otieno for Ms. Atieno for the accused
2. Ms. Rakama for the DPP
3. Otolu C/A

