



**Republic v Mujirwa (Criminal Case E001 of 2024)  
[2024] KEHC 3619 (KLR) (2 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3619 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
CRIMINAL CASE E001 OF 2024**

**F GIKONYO, J  
APRIL 2, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PATRICK MUJIRWA ..... ACCUSED**

**RULING**

1. Ms. Mireri counsel for the accused person orally applied for the accused person to be released on reasonable bond terms. She argued that the accused has a right to bail as part of a fair hearing and enjoys the presumption of innocence.
2. Mr. Okeyo prosecution counsel opposed the application for reasons that there are compelling reasons in the investigating officer’s affidavit filed. He argued that generally witnesses are his immediate neighbours and include women. He chased some of the witnesses with a slasher upon commission of the crime. The reasons in the affidavit are sufficient compelling reasons. Details of the witnesses he chased with a slasher have been provided. He urged this court not to release the accused on bond.
3. In a rejoinder, Ms. Mireri argued that being neighbours to witnesses is not a compelling reason. Being a woman does not portray anything special. No evidence that the accused threatened the witnesses. No. OB to that effect. The contents of the affidavit do not reveal compelling reasons. No substantive justification for the refusal of bail. No details of how he is a flight risk. No details of the manner of interference. She urged this court to release the accused on bail.

**Analysis and Determination**

**Right to bail**

4. All persons charged with a criminal offence are 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). This is based on the right to be presumed innocent until the contrary is proven (*R. vs. Richard David Alden* (2016) eKLR.)

### **Compelling reason and burden of proof**

5. 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**

6. 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**

7. The prosecution cited three grounds on which they opposed bail; i) witness interference, ii) flight risk, and iii) safety and security of the accused person.
8. This court will invert the order.

### **Security and safety of the accused person**

9. The investigating officer in his affidavit stated that the incident brought a lot of public outrage and it is fresh in the minds of the members of the public who are still concerned and know the evidence gathered which is in the public domain is necessary to protect the accused person.
10. The defence has not responded to this issue.
11. 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.
12. Anger on the part of members of the family of the deceased or the public due to the heinous killing of their kin or member comes naturally and should be soothed by among other things, bringing the accused to book through., and participating in the due process.
13. It is possible, amidst sorrow, to be moved by a sense of duty and an abhorrence of the outrageous conduct of the culprits without necessarily craving for revenge. This is apt healing and solace to the family members of the victim to regain their dignified mood and cool in dealing with their loss of kin.
14. 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 through bond or bail pending trial. We must be careful 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.
15. 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.
16. This court's view is that the ground that the security of the accused is threatened by the members of the public or family of the deceased should never be encouraged as a ground for denial of bail; unless there



is real evidence of actual threat; lest we should inadvertently promote or condone violence, disorder, and usurping of law by individuals or group of people.

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

### **Flight Risk.**

18. In his affidavit, IP Boniface Wahome averred that the prosecution has overwhelming and irrefutable evidence that points to the accused person as guilty thus there is a high likelihood that the prosecution will secure a conviction. The prosecution is apprehensive that if the accused is released on bond is likely to flee the jurisdiction of the court due to the fear of being sentenced. This argument is neither here nor there, for no evidence has been tabled before this court which gives the argument the power and grace, which shows that the accused will go into hiding to avoid the hand of the law.
19. Whereas self-preservation is a human tendency, merely stating that he might be found guilty and sentenced, is not sufficient to prove he will flee the law. Real evidence is required to show that the accused is likely to go into hiding and is likely to abscond trial. No such evidence upon which an inference may be drawn that he will abscond. For these reasons, the ground is not sustainable. This court rejects it.

### **Interference with witnesses**

20. 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)
21. See also a work of 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.”
22. 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)
23. IP Boniface Wahome averred that the accused will interfere with investigations and crucial witnesses. He stated that during the incident the accused while armed with the murder weapon that is the slasher, chased away the eyewitness who is his neighbor when she responded to the screaming.
24. The prosecution submitted that the accused would interfere with a key witness; his neighbor.
25. It is not far-fetched or unfounded that, the presence of the accused person amid such neighbours who are eye 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. By chasing one of the eye witnesses with the murder weapon is a pointed indication of interference with witnesses.

26. 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.
27. Consequently, the prosecution has proved that the accused is likely to interfere with the witness herein.
28. 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**

29. 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.
30. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS  
ONLINE APPLICATION THIS 2<sup>ND</sup> DAY OF APRIL, 2024.**

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**F. GIKONYO M.  
JUDGE**

In the Presence of:

1. CA - Leken
2. M/s. Mireri for Accused – present
3. Okeyo for DPP - present

