



**State v Atieno & 16 others (Criminal Case E017 of 2024)
[2024] KEHC 4665 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4665 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E017 OF 2024
DO OGEMBO, J
APRIL 16, 2024**

BETWEEN

STATE PROSECUTION

AND

- CAREN OKUMU ATIENO 1ST ACCUSED**
- JOHN AKETCH OCHIA 2ND ACCUSED**
- BONIFACE OCHIENG OTIENO 3RD ACCUSED**
- LENNOX ADEDE OMONDI 4TH ACCUSED**
- JARED OMONDI ADUA 5TH ACCUSED**
- WYCLIFFE ODHIAMBO ABIDHA 6TH ACCUSED**
- PASCAL ODHIAMBO ABIDHA 7TH ACCUSED**
- JOSEPH OCHIENG OLUOCH 8TH ACCUSED**
- RONNY ODHIAMBO OWUOR 9TH ACCUSED**
- EVANS ODIWUOR ALILA 10TH ACCUSED**
- JOSEPH TABU 11TH ACCUSED**
- COMIC OUMA ALILA 12TH ACCUSED**
- MOSES ODHIAMBO 13TH ACCUSED**
- NELSON OCHIENG OMOLLO 14TH ACCUSED**
- SAMUEL OTIENO OLUOCH 15TH ACCUSED**
- AUSTIN ANYALA 16TH ACCUSED**
- GEORGE OTIENO 17TH ACCUSED**



RULING

1. I have considered the application of the prosecution and the responses by learned counsel for the accused. The accused before court have been in custody for upto one month for the reason that Doctors in public hospitals have been on strike and it has not been possible to subject them to mental assessment so that it is known if they are fit to plead. I would not say much as to the constitutionality or legality of mental assessment of accused persons before they are subjected to murder trials as no substantive application has been brought forth before this court for determination.
2. Article 50 (1) (h) guarantees the right to bail to all arrested and or accused persons irrespective of the charges that they face. And the right to bail may only be limited or denied where it is shown the existence of any compelling reason. In this case, the prosecution has not shown any such compelling reason. The reason the prosecution seeks to have the accused remanded in custody further before they can answer to the charges is that they have not been subjected to mental assessment due to the strike of doctors in public hospitals.
3. This court takes judicial notice of the doctors' strike and the fact that it is uncertain when the doctor will resume duties. Accused have already been in custody for about one month. They have no control over the issue of the doctors' strike, particularly, how long it will last. In my view it would be an infringement on the accused's right to bail, should they be detained in custody pending the resumption of duty by the doctors who are still on strike.
4. For this reason, I am convinced that it would be fair and proper to grant the accused bail pending their answering to the charges. I note that the investigating officer IP J. Akama based at Rarieda DCI is present in court. Both the investigating officer and the accused have confirmed that all accused reside within the vicinity of Aram police station. It is therefore my opinion as I hereby do, that it is in the interest of justice in the circumstances pertaining herein, to place the accused on conditional pre-trial bail.
5. I accordingly decline the application of the prosecution and order that each accused person may be released on bail on the following terms:-
 - i. Each accused to be released on a personal bond of Ksh.200,000/=.
 - ii. In addition, each accused to be released on one surety of Ksh200,000/=. Such surety shall deposit in court a security in the form of copy of his/her national identity card.
 - iii. Upon release, each accused is ordered to report to the investigating officer, IP Akama C/o. DCI, failure to observe this condition would result in automatic expiry of the accused bond and the investigating officer would be at liberty to arrest the accused and have him in custody.
 - iv. Should the doctors' strike end or be called off, the investigating officer will be at liberty to escort the accused to hospital for mental assessment.
 - v. Lastly, the plea herein is deferred. The same is fixed on the next mention date when this matter also comes up for any further direction.

Mention on 30/4/2024.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 16TH DAY OF APRIL, 2024

D.O. OGEMBO



JUDGE

16/4/2024

