



Republic v Gathuna (Criminal Case 3 of 2023) [2024] KEHC 5918 (KLR) (16 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 3 OF 2023
DR KAVEDZA, J
MAY 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SARAH RUKIA GATHUNA ACCUSED

RULING

1. The accused is facing a charge of murder contrary to section 203 as read with 204 of the [Penal Code](#) (Cap 63) Laws of Kenya, in respect of the deceased George Waiyaki Gichure alias Geshe. After taking plea, the accused was denied bail by this court on 7th November 2022. The reason for the denial of bail at the time was the likelihood of interference with witnesses. This is because some of the witnesses are closely related to her and others were her neighbours. This court was of the view that the applicant had not shown to have an alternative place of abode where she would not interact with the said witnesses until the conclusion of her trial.
2. The accused filed another application dated 29th January 2024 seeking a review of the orders of this court denying her bail. Vide a ruling delivered on 24th April 2024, this court dismissed the application for the reason that the circumstances of the case had not changed since the denial of bail.
3. On 16th May 2024, Mr. Waweru, the accused’s counsel on record, made another application for bail. He contended that material witnesses had since testified and the preconditions set by the court had been fulfilled. He urged the court to grant reasonable bail terms.



4. The issue is whether the applicant has established the existence of changed circumstances to warrant the grant of bail pending trial. In *Republic v Francis Maina Wairimu* [2020] eKLR, Wakiaga J held that:

“In an application for review for denial of bail, the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders”.

5. While the burden of proof with regard to changed circumstances may appear to fall on the accused as the applicant for bail review, it is a matter that falls for consideration under the general principle that an accused person is entitled to bail unless compelling reasons exist for refusal. Since the denial of bail in November 2022, the circumstances of the case have since changed. Crucial prosecution witnesses have testified and there is no risk of interference. The compelling reasons for the denial of bail no longer exists. It is apparent to this court that the accused has established the existence of changed circumstances.

6. The upshot is that the application bail is allowed under the following terms:

- I. The accused Sarah Rukia Gathuna is released on a surety bond of Kenya Shillings Three Million (3,000,000) of a fixed Kenyan asset.
- II. The investigating officer is directed to verify the authenticity of the fixed asset to be approved by the Deputy Registrar.
- III. In the interim period, the accused will be remanded in custody until he complies with the terms of her release.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF MAY 2024.

D. KAVEDZA

JUDGE

