



**Republic v Issack (Criminal Case E002 of 2024)
[2024] KEHC 5220 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E002 OF 2024**

JN ONYIEGO, J

MAY 14, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHAMUD ISSACK ACCUSED

RULING

1. This ruling is in reference to an application by the applicant seeking to be admitted to bail/bond. The applicant is charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. The particulars of the offence are that on 01.04.2024 at Madogo Secondary School, Madogo Location, Bangale Sub county within Tanan River County unlawfully murdered John Ndungo.
2. Having returned a plea of not guilty, the applicant through his advocate, Mr. Njagi urged this court to admit him to reasonable bond/bail terms pending trial. Counsel simply urged that the accused is innocent until proved guilty. In opposing the said application, Mr. Kihara, counsel for the respondent urged that the pre- bail report was not favourable. He stated that the accused was not fit to be admitted on bail/bond since he was a danger to society.
3. I have considered the application herein and the objection thereof. The only issue for determination is whether this court should exercise its jurisdiction to admit the applicant to bail pending trial. It is trite that admission of an accused person to bail pending trial is a constitutional right though not absolute. Article 49(1)(h) of the *Constitution* of Kenya, 2010 provides that: -

“An 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”.



4. There is no doubt the Constitution does not define the term ‘compelling reasons’. However, in ordinary balance, compelling reason would generally be something that is in accordance with the fact or some reality. In the case of Republic v Joktan Mayende & 4 others Bungoma High Court Criminal Case No 55 of 2009 the court defined the term “compelling reasons” as follows: -

“The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.”

[Also see Republic v Francis Kimathi [2017] eKLR].

5. The Bail and Bond Policy Guidelines provides thus, in regard to compelling reasons:

“(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- a. That the accused person is likely to fail to attend court proceedings; or
- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
- c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e. That the accused person is likely to interfere with witnesses or evidence; or
- f. That the accused person is likely to endanger national security; or
- g. That it is in the public interest to detain the accused person in custody.”

6. It is trite that an accused person is presumed innocent until proven guilty and therefore, such a person’s liberty should not be deprived of over flimsy reasons. The deprivation of liberty should be as a result of cogent reasons and in accordance to the principles known in law.

7. In the case of Republic v Dwight Sagaray & 4 others (2013) eKLR the court had this to state:

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others..., at least some facts must be placed before court otherwise it is asking the court to speculate.”



8. In the instant case, the pre bail report enunciated several reasons including the fact that the accused was not only a danger to the society for reasons inter alia that he walks around with a knife or arrows but also that the public might take matters in their hands and lynch him if he is released. It was reported that the accused person previously issued threats to the family of the deceased that he shall avenge the fact that he has been brought to court. That the threats have since caused fears to the would be witnesses in this case and the society in general.
9. From the foregoing, I find that this is not a case where I should exercise my discretion in admitting the applicant to bail/bond terms for his own safety and that of the society. Unfortunately, counsel for the accused did not rebut these assertions. In my view, these are compelling reasons.
10. In view of the above holding, I am inclined therefore to direct that the applicant shall remain in custody during the pendency of the proceedings herein unless the circumstances herein change.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF MAY 2024

J. N. ONYIEGO

JUDGE

