



**Republic v Lubondi (Criminal Case E053 of 2023)  
[2024] KEHC 5997 (KLR) (Crim) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5997 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CRIMINAL  
CRIMINAL CASE E053 OF 2023  
LN MUTENDE, J  
MAY 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEORGE OPIYO LUBONDI ..... ACCUSED**

**RULING**

1. George Opiyo Lubondi, the accused, is charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 20/7/2023 at Mwiki area within Kasarani, the accused murdered Philip Mwambua.
2. The accused having denied committing the offence now seeks to be released on bond pending trial.
3. According to the prebail information report, the accused family supports his application and is ready to raise funds and arrange to get collateral for his release. The accused father is also ready to be his contact person. At the time of his arrest, he worked as a machine operator and was residing at Mwiki with his wife and child. His wife left with his child but his parents and siblings are at Mwiki, while his ancestral home is Budalangi. The community at Namonye also supports his release on bail.
4. The application for his release on bond is opposed by the State through Sergeant Luke Marwa of DCI Kasarani. He depones that he is part of the investigating officers of the case and contends that key witnesses to wit Stephen Odongo and Eric Ogallo are the accused's brothers and that the mother of the deceased is the accused neighbor and is likely to be a witness in the case.
5. That the accused may interfere with and exert pressure or fear on the witnesses. He is also likely to abscond trial if he is released.



6. The victim's family also objects his release on bond. Their fear is that he is a flight risk, he will also interfere with witnesses and they confirm that the accused is their neighbour in Mwiki area. That the victim's family relocated from Mwiki due to fear of intimidation and to avoid confrontation. The community in Mwiki oppose his release on ground of public safety since the incident is still fresh on their minds.
7. The prosecution is of the view that bond should be delayed until key witnesses testify.
8. I have considered rival submissions. Article 49 of the Constitution provides that an arrested person has the right to released on bail unless there are compelling reasons that would The Judiciary of Kenya Doc Identity: 26526721402890312372114901681 Tracking Number: OO96CH2024 2/3 require otherwise.
9. The right to bail can only be limited where there is evidence of compelling reasons, such grounds must be demonstrated and found persuasive, forceful and convincing, and the prosecution is duty bound to do so. (See the case of Republic -vs- Danson Mgunya & Another (2010) eKLR).
10. The issue for determination is whether the accused is a flight risk, would he abscond trial if released and whether he would interfere with witnesses.
11. The prosecution has not demonstrated that the accused is prone to or exposed to circumstances that make him a flight risk. The pre-bail report indicates that he comes from Mwiki and Budalangi and that his father is ready to be his contact person. He also operates his machinery business in Mwiki and therefore would have no reason to escape from the region.
12. Although gravity of the offence, in this case, murder and the ultimate serious sentence that is attached comes with incentive to abscond , that reasoning is not cast in stone since suspects facing trial on misdemeanor offences also jump bail and frustrate trial processes
13. On whether the accused is likely to interfere with witnesses; In R. v. Dwight Sagaray & 4 others, 2013 eKLR, the court stated that: -

“For the prosecution to succeed in persuading the court on this criteria, 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 familiar relationship between the accused and witnesses among others.”
14. There is no doubt that interference may happen at any stage, before, after arrest and arraignment. The relationship of the accused and unavoidable interaction also heightens the chances of witness contact and interference with witness testimony .This is also seen in the bigger picture as having potential to frustrate the trial.
15. Herein, the prosecution have pointed out 2 key witnesses who are the accused brothers. The accused is also a neighbour to the primary victim family and the mother is a witness. These grounds have not been disputed. The accused has not told the court whether he would relocate if his application is successful.
16. The issue of public safety and community concerns has not been demonstrated beyond doubt, the incident occurred 10 months ago and there is a possibility that the anxiety has cooled off. The only issue is the familial relationship between the accused and key witnesses. Strong averment have been put forward of the relationship between the accused and his two brothers, key witnesses. This fact is not rebutted, therefore, there is a likelihood of the accused interfering and/or intimidating such



witnesses. This court cannot impose conditions that will deter the accused from interfering with the key witnesses.

17. The end result is that the application for bond pending trial is declined at this stage. The accused is at liberty to apply for review once circumstances change.

18. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**L. N. MUTENDE**

**JUDGE**

