



**Republic v Lemashon (Criminal Case E002 of 2024)
[2024] KEHC 5687 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5687 (KLR)

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

F GIKONYO, J

MAY 8, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

NICHOLAS LEMASHON ACCUSED

RULING

1. Ms. Kithinji counsel for the accused person orally applied for the accused person to be released on reasonable bond terms.
2. Mr. Okeyo prosecution counsel opposed the application on the basis that there are compelling reasons disclosed in the investigating officer’s affidavit filed.
3. Ms. Kithinji has filed quite targeted submissions addressing the two grounds stated by the prosecution to wit; i) flight-risk; and ii) interference with witnesses. The applicant provided detailed information about the home and family of the accused, and concluded that, contrary to the allegations by the prosecution, the accused person has a known fixed abode.
4. The legal counsel also dismissed claims of interference with witnesses as hollow and devoid of factual or legal basis.
5. The defense counsel stated that the prosecution did not prove any compelling reason not to release the accused on bond. She urged the court to release the accused on reasonable bond terms.

Analysis And Determination

Right to bail

6. A person charged with any criminal offence is entitled to be released on bond on reasonable conditions unless there is compelling reason not to be so released (art. 49(1)(h) of the Constitution of Kenya, 2010).



The logic of right to bail in all offences, is premised upon the right to be presumption of innocence which is enjoyed by any person charged with a criminal offence regardless of the nature of the offence (*R. v Richard David Alden* (2016) eKLR.)

Compelling reason and burden of proof

7. 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

8. 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

9. The prosecution cited two grounds on which they opposed bail; i) flight risk, and ii) interference with investigations.

Flight risk

10. In his affidavit, PC John Wanyoike avers that the accused person is a flight risk; that he has no fixed place of abode, and that it took them a long time to arrest him as he kept dodging police officers.
11. The applicant submitted that he has a known and fixed place of abode and has strong family and community ties within Transmara. The accused is the son of Mr. Moses Oerau Mararo(deceased) and Mrs. Mary Eitoto Mararo of ID no. 25047047 and is the second child in the family of 6 children. The family resides within the Oloiborsoito Location. The applicant relied on the letter from the area chief.
12. The argument by the prosecution is neither here nor there, for it is not grounded on any concrete evidence that the accused is likely to abscond or go into hiding. For these reasons, the ground is not substantiated. This court rejects it.

Interference with witnesses

13. The investigating officer in his affidavit states that the applicant is likely to interfere with investigations. Mr. Okeyo submitted that the applicant may interfere with crucial witnesses who are his close friends and may compromise them.
14. The applicant submitted that the allegation of interference with investigations does not disclose any factual or legal basis for the opinion. It is a mere blanket opinion that is unsupported and unexplained. The applicant relied on article 49 of the *Constitution* and *Republic v Dwight Sagary & 4 Others* [2013] eKLR.
15. Interference with witnesses is an affront to and impeaches the integrity of the trial. Thus, justifiable reason to limit the right to liberty (*R. v Patius Gichobi*, article 24 of the *Constitution*)
16. See also a work of the court in *R. v 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 the right to liberty in law in an open and democratic society as a way of safeguarding the



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.”

17. 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. v Dwight Sagaray & 4 others, 2013 eKLR)
18. In the present case, the prosecution stated in their affidavit that the accused is likely to interfere with crucial witnesses who are his close friends and investigations.
19. It is not far-fetched that an accused person may be tempted to seek favour from his close friends to bail him out of ‘the problem’ or ‘situation’. But, it is important that the prosecution should establish the kind of relationship between the accused and the particular witness which supports likelihood of interference with the witnesses by the accused. For, instance, if they are business partners, or owe allegiance to the accused, or the accused was their mentor or has had significant influence over them.
20. The ground is not idle. The court, therefore, orders the prosecution to isolate those witnesses who are close friends of the accused and are likely to be interfered with, to give their testimonies without delay, after which the question of bail shall be revisited. A date for hearing of the said witnesses to be fixed by the court. Meanwhile, the accused person shall remain in custody.
21. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 8TH DAY OF MAY, 2024.**

.....
HON. F. GIKONYO M.

JUDGE

In the presence of: -

Accused

Namude for Ms. Kithinji for accused

Okeyo for DPP

Leken C/A

