



**Republic v Mutinda Alias Alebo (Criminal Case E096 of 2021)
[2024] KEHC 5067 (KLR) (Crim) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5067 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL**

CRIMINAL CASE E096 OF 2021

LN MUTENDE, J

MAY 8, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ALEXANDER MUTINDA ALIAS ALEBO ACCUSED

RULING

1. Alexander Mutinda *alias* Alebo, the accused, faces 2 counts of Murder contrary to Section 203 as read 204 of the *Penal Code*. The particulars of the offence being that on the night of 5/11/2021 at Umoja II Zone 8 in Buruburu Sub- County, jointly with another not before court, murdered Eric Maina Njeri Alosa Mlepo (Deceased); and, at the stated date and place also murdered Truphena Njura Runo alias Gladyc Leila (Deceased).
2. Having denied the charges, the accused seeks to be released on bond /bail pending trial, an application that is opposed through an affidavit that is sworn by Moses Abwere the Investigating Officer in the case who deposes that the incident that occurred on the night of 5/11/2021 caused a lot of public outcry among the deceased neighbours and relatives. That members of public wanted to lynch the accused and his security is not guaranteed and there is still tension in Umoja II area. That the accused and 5 persons listed as witnesses worked together with the deceased as garbage collectors and there is a likelihood of witness interference.
3. Further that the accused is well known to all civilian witnesses who were also mutual friends with the deceased. The accused is also aware that the said witnesses are likely to be called as witnesses. That the accused accomplices are still at large and if released the accused would vanish to an unknown place.
4. The State in objecting to the accused release on bail argues that the 5 civilian witnesses are well known to the accused, that the accused has been provided with witness statements and is now privy to the



evidence that the witnesses will adduce. Reliance in this respect is placed on the case of *Republic v Leliman & 4 Others* (2019) eKLR and it is urged that interference of witnesses covers a wide range and can be immediate before commission of the act, after or during trial.

5. That the accused was almost being lynched but the police arrived at the scene and rescued him and his security is not guaranteed if released at this stage. That it would not be prejudicial to let the witnesses testify before the court can grant bail.
6. In response thereto, the accused urges that Article 49 provides for reasonable conditions and that if the accused safety is at risk and the court is not stopped from putting such conditions, the accused should not go back to the area of offence.
7. That no civilian witness has indicated the likelihood of interference. Further that the witnesses are ring leaders of a mob that wanted to attack him and he cannot influence the said witnesses.
8. The accused refers court to the case of *Cyrus Mwangi v Republic* (2016) eKLR where Limo J held that tensions may cool down after passage of time and that is not a compelling reason.
9. Stating that the accused mother is a casual labourer in production companies at the industrial area whereas the father is a driver at Eastleigh Sacco. The defence prayed for reasonable bond terms of Ksh 100,000/= with similar surety.
10. I have considered rival arguments. Article 49 of the [Constitution](#) as read with the provisions of Section 123 of the [Criminal Procedure Code](#) provide that an accused shall be entitled to bond pending his trial, this is a constitutional right that can only be limited by law and existence of compelling reasons.
11. The burden of proof is on the prosecution to demonstrate convincing, persuasive and/or forceful reasons to deny bail. Such reasons have been listed under Section 123 and the [judiciary bail bond policy guidelines](#). (Also see the case of *R v Joktan Mayende and 3 Others* (2012) eKLR).
12. The prosecution reasons for opposing grant of bail are that there is a risk of witness interference if the accused is released. The State has also argued that the accused security is at risk. It is admitted that the accused was almost lynched by a mob during his arrest in 2021 at Umoja 2. No evidence has been put forth to suggest that the situation has cooled down. The accused has also not advised court whether he has an alternative place of residence away from the crime scene.
13. The provisions of Section 123 list the risk of security, public order and whether the accused would need security as key considerations.
14. In the case of *R. V. Richard David Alden* (2016) eKLR, Lesiit J (As she then was) summarized the considerations listed under Section 123 of the [CPC](#) also listed in the bail in the [Bail and Bond Police Guidelines](#) which include:

“whether there is need for the protection of accused person.”
15. The court held that the interest of the accused must be balanced with the interest of justice and each case depends on its circumstances.
16. On whether there is risk of witness interference, in the case of *Republic v Antony Karanja Njeru* [2016] eKLR, the High court held that:

“...It has long been recognized that an accused who interferes with witnesses does not qualify to be granted bail. In *Panju v R* (1973) E.A. 282 the High Court held that where an allegation of interference with witnesses is used as a ground of opposing release on bail,



the prosecution must produce evidence. This was the practice under the independence Constitution of 1963. The requirement to produce evidence to support an allegation of interference with witnesses is in principle good law. The reason being that a decision of a court must be based on evidence.”

17. Meaning that reasons must not be speculative but must be proved beyond doubt. The alleged civilian witnesses likely to be interfered with have not been identified by the respondent making this ground speculative. The accused is said to have received witness statements and the prosecution had made available material to cite the targeted witnesses. However, the fact that these witnesses are said to have worked with the accused and the deceased, some being neighbours is not only disputed but also raises apprehension that the accused if released is likely to reach out to his said friends and neighbours.
18. In the case of *Republic 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.”
19. The upshot of the above is that the question that is of concern is that of the accused security which calls upon this court to deny him bail for purposes of protection until circumstances change. Therefore, I decline to grant orders sought.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 8TH DAY OF MAY, 2024.

L. N. MUTENDE

JUDGE

