



**Republic v Ochieng alias Hype Balo (Criminal Case
E011 of 2024) [2024] KEHC 14627 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 14627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E011 OF 2024
DO CHEPKWONY, J
MAY 8, 2024**

BETWEEN

REPUBLIC STATE

AND

ALLAN OCHIENG ALIAS HYPE BALO ACCUSED

RULING

1. The Accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that:-

“On the 16th March, 2024 along Kikuyu road, Kikuyu township in Kikuyu Sub County within Kiambu County, the accused murdered Felix Kelian Kintosi.”

2. The Accused pleaded “Not Guilty” to the offence and his Counsel, Mr. Oketch urged the court to grant him favourable bail and bond terms or even cash bail which he is entitled to as a Constitutional right especially since by his name ‘HYPE’, it clearly shows he is in the music industry and hence not a person of means. Counsel submitted that since his arrest, the accused has been co-operating well with the officers. Counsel assured court that since the accused is well known, the issue of him being a flight risk will not arise. He holds that the accused has undertaken to attend court as and whenever he is required to do so as to have the matter proceeds. He is ready to report to the Investigating Officer once a week if the court directs. It has also been pointed out that his family has raised a sum of Kshs.300,000.00 for cash bail which is a show of commitment.
3. The Counsel for the State informed the court that since the case is a public interest one they are opposed to the granting of bail and bond terms for the accused. She urged the court to grant them time to file an Affidavit in the matter. And on 2nd May, 2024, the Investigating Officer No. 236734 C.I Clement



Mwangi filed an Affidavit opposing the granting of bail and bond for the accused. He holds that he has three compelling reasons why the Accused should not be released on bail and bond. Firstly, he avers that the accused is likely to interfere with key prosecution witnesses particularly Joseph Mwenda Munoru alias DJ Joe Mfalme who is his employer and a person with close relations as seen on the social media posts from djoemfalme twitter account. He further holds that the said Joseph Mwenda Munoru alias DJ Joe Mfalme has even sought to fund raise legal fees for the accused person which shows how close the two are, and therefore, a high chance of interference.

4. Secondly, the Investigating Officer states that the other witnesses being Simon Wambugu Wanjiru and Eric Kariuki Gathua are colleagues of the accused, having all worked for the said Joseph Mwenda Munoru alias DJ Joe Mfalme and are all members of Whatsapp group by DJ JOE MFALME GROUP in which group they have intense discussion on the case of the murder of Felix Kelian Kintosi. He also holds that another witness by the name Susan Wanjiru Waithera alias Njiwa who works as an Event Manager at Texas BBQ where the other witnesses and the accused were coming from at the time of the accident had developed a close relationship with he accused hence there is a likelihood interfering with these witnesses.
5. The Investigating Officer contends that the accused person is a flight risk because after beating up the deceased and seeing his health deteriorate, he fled the scene and had to be tricked into a meeting with his employer Joseph Mwenda Munoru alias DJ Joe Mfalme for his arrest to be effected and therefore his cooperation while on bond is not guaranteed. He holds that the matter has attracted a huge public interest and attention that it will therefore serve the interest of justice if the accused person is denied bond to even give the deceased's family time to heal and for their tempers to cool down.
6. Further, the Investigating Officer has stated that though the right to bond is provided for under Article 49 of *the Constitution*, the same is not an absolute right as it can be limited if there are compelling reasons to do so. He holds that the accused should be denied bond until all key witnesses have testified and tempers of the victims of the murder case have calmed.
7. In the Bail Information Report filed on 2nd May, 2024, the Probation Officer has submitted that the accused person is the only son of the late Rosemary Atieno who passed on in the year 2007 and he was left in the custody of his grandmother and aunt who are willing to support him both emotionally or financially and so as to ensure that he attends court as and when he is required until the case is heard and determined.
8. The Probation Officer also holds that the accused understands the gravity of offence, the consequences of jumping bail or engaging in any acts that can be seen as witness interference or risk their security. On the part of the victim's family, it is stated that they oppose the consideration for bail due to the possibility of interference with the trial process since his friends are the witnesses in the matter. Further, the victim's family is still traumatized by the loss of their kin. On the recommendation, the probation officer stated that the court can grant bail and bond terms while taking into account the sentiments of the victim family.

Analysis and Determination

9. In considering the application herein, I have read through the Supporting Affidavit filed by the Applicant, the affidavit filed by Respondent alongside the Pre-bail Information Report filed on 2nd May, 2024.
10. The right to grant bail and bond terms is provided for under Article 49 (1)(h) of *the Constitution* which provides that: -



‘An accused person has the right ...

h. to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.’

11. From the said provisions, it is clear that while the accused has a right to be released on bond or bail, the said right is not absolute because if compelling reasons are tendered against the accused, then the court ought to consider whether they are sufficient or substantive enough to warrant the denial of bail and bond terms. In this case of Republic –Vs- Joseph Thiongo Waweru & 17 Others [2017] eKLR, the court defined compelling reasons as follows: -

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

12. According to the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:-

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the Promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

13. Under Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, various factors which ought to be considered in bail and bond application are set out. The factors include:-

1. Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - a. the nature or seriousness of the offence;
 - b. the character, antecedents, associations and community ties of the accused person;
 - c. the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and;
 - d. the strength of the evidence of his having committed the offence;
2. A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - a. has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - b. should be kept in custody for his own protection.

14. In this case, the court has considered the sentiments of the accused and prosecution counsel that the accused is well known to the prosecution’s witnesses particularly his employer Joseph Mwenda Munoru alias DJ Joe Mfalme. The court notes that the other witnesses being Simon Wambugu



Wanjiru, Eric Kariuki Gathua and Susan Wanjiru Waithera alias Njiwa are well known to the accused and therefore the likelihood of interference is very high. However, the recommendations by the Probation Officer is positive in respect of the accused person. That;

“The court can grant accused person stringent bond/bail terms taking into account the sentiments of the victim’s family”.

15. Ultimately, the court finds that the prosecution has not provided sufficient evidence to demonstrate compelling reasons why the accused should be denied release on bond/bail. The court therefore proceeds to allow the application by the accused person to be released on bond/bail on the following terms:-

- a. The accused may be released on his own bond of Kshs.500,000/= with one surety of a similar amount.
- b. In the alternative, the accused to be released on cash bail of Kshs.500,000/=.
- c. The accused person to attend court wherever he is required until the case is fully determined.
- d. The accused to report to the DCI, Kikuyu Sub-County every 1st Monday of the month until such time that the key witnesses are confirmed to have testified.
- e. The accused to remain under the close supervision of the Chief Kibra Location to ensure he remains within this court’s jurisdiction and refrain from interfering with witnesses.
- f. The accused to provide full particulars of a contact person.
- g. Failure to abide by the conditions above will render the bail terms cancelled and or revoked and accused remanded in custody during the remainder of his trial.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 8TH DAY OF MAY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Ndeda counsel for the State

Mr. Oketch alongside Mr. Mwinzi counsel for the accused

Mr. Idambo alongside Mr. Mugwe for Family of the Deceased

Accused – present

Court Assistant - Martin

