



State v Aloo (Criminal Case E022 of 2024) [2024] KEHC 6059 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E022 OF 2024
DO OGEMBO, J
MAY 23, 2024**

BETWEEN

STATE PROSECUTION

AND

JARED ALUGO ALOO ACCUSED

RULING

1. The accused, Jared Aluga Aloo, has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He has applied to this court to be released on bail pending the hearing of his case. The application of the accused is opposed by the State, who have filed an affidavit of investigating Officer Pc Peter Mavangi sworn on 20th May 2024.
2. First, the prosecution has opposed the application on grounds that accused is likely to interfere with prosecution witnesses if released on bail as the two witnesses are neighbours of the accused. The application is also opposed on grounds of the accused personal safety, and that if released, the villagers will attack the accused.
3. In response, Counsel for the accused has submitted that the issues raised in the affidavit of the investigating officer are issues yet to be determined. And that it is the accused who out of abundance of caution called in the police. He challenged the prosecution for failing to produce any evidence of report even made about threats to burn the house of the accused. It was also denied that accused would interfere with any prosecution witnesses. The court was urged to impose appropriate conditions, and that accused is ready to relocate to Eldoret far from the scene of crime. He produced a medical note showing that the accused suffers from a chronic condition.
4. I have considered the submissions made by the two parties to this application under Article 49 (1) (h) of *the Constitution*, the right to bail pending trial is available to all accused persons irrespective of the charges that they face. The right to bail is however, not an absolute right. The same may be denied



should the prosecution show the existence of any compelling reason. These are simply put, reasons that are strong enough as to justify the denial of the right.

5. In this case, the prosecution's objection is based on the likelihood of interference with the prosecution witnesses should the accused be released on bail. It was submitted that at least two of the witnesses are neighbours of the accused who are likely to be intimidated or interfered with by the accused should the accused be released on bail. This court has a duty both to ensure that accused is accorded a fair trial while at the same time ensuring that the evidence of the prosecution is preserved. The court would therefore be failing in its duty if it fails in securing the evidence of the prosecution witnesses.
6. At least two prosecution witnesses are submitted to be neighbours of the accused. In this circumstances, I agree with the submissions of the prosecution that if released, the likelihood of the accused interfering with these witnesses will be real.
7. On the 2nd objection based on the accused's own safety, for this ground to succeed, the prosecution ought to produce tangible evidence of such threats to the life and security of the accused. Not even a report of such threat was shown to court. As submitted therefor, this ground remained a mere speculation which does not amount to a compelling reason. This court is therefore convinced that it is important to secure the evidence of the prosecution by way of denying the accused bond or bail till the evidence of the two prosecution witnesses are taken. I accordingly decline to grant the orders sought by the defence for release of the accused on bail pending his trial. I accordingly therefore order that accused be remanded in custody pending the taking of the evidence of the two witnesses as urged by the prosecution. The accused shall be at liberty to renew his application for bail once the two witnesses have testified. It is so ordered.

DATED, SIGNED AND DELIVERED ON THIS 23RD DAY OF MAY, 2024.

D.O. OGEMBO

JUDGE

23/5/2024

Court

Ruling read out in Open Court in presence of accused, Mr. Ochanyo for accused and Ms. Kerubo for State.

D. O. OGEMBO

JUDGE

23/5/2024

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