



**Republic v Ongo'a (Criminal Case E013 of 2024)
[2024] KEHC 7267 (KLR) (Crim) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E013 OF 2024
K KIMONDO, J
JUNE 20, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN MATARA ONGO'A ACCUSED

RULING

1. John Matara Ong'oa (hereafter the accused) is charged with the murder of Starlet Wahu. He now seeks bail pending his trial. His notice of motion is dated 9th February 2024 and founded upon three separate depositions.
2. The first two affidavits were sworn on even date by the accused and his father, Mark Ong'oa. The third was sworn by the accused on 11th March 2024 largely in reply to the averments by Sergeant Alex Chokera, the investigating officer, made in his affidavit dated 23rd February 2024.
3. It is thus apparent that the prayer for bail is opposed by the Republic. It is also fervently contested by the family of the victims. I should add that I called for a pre-bail report which was filed on 13th May 2024 under the hand of Albert Jaoko, Probation Officer. The report is not favourable to the accused.
4. Learned counsel for the accused, Mr. Ayora, submitted that neither the affidavit by the investigating officer nor the pre-bail report demonstrate any compelling reason for denial of bail. He stated that the accused is a resident of Nairobi at Kahawa West and also has a rural home in Daraja Mbili, Kisii known as Central Kitutu/Daraja Mbili/1720 owned by his father. The latter in his affidavit confirms that he is ready to surrender that title as security for his son's release.



5. Counsel implored me to find that the accused has strong family ties and is not a flight-risk as claimed by the State. True, the accused has a travel passport but has never used it. He was not obligated to make such a disclosure, and, in any event ready to surrender it to the court.
6. Regarding the likelihood to interfere with witnesses, the accused and his father were categorical that there is no such evidence. Furthermore, the investigations are now complete and no such threats have ever been made to the police. Learned counsel argued that witnesses can also be protected under the [Witness Protection Act](#). The accused also undertook not to visit the locus in quo, and if so ordered, to relocate from Nairobi to Daraja Mbili.
7. In a synopsis, counsel contended that there are no compelling reasons to deny the motion. He relied primarily on Article 49 (1) (h) of the [Constitution](#).
8. The Republic on the other hand relied on the affidavit of Sergeant Chokera aforementioned. He deposed that the rental house for the accused at Kahawa West has since been vacated and there is no guarantee that his father can guarantee his attendance at the trial. In paragraphs 16 to 17, there are references to other alleged complaints by women who had been lured to AirBNBs by the accused. Reference was also made to the pre-bail report over a pending criminal trial at the Chief Magistrates Courts Ruiru CRC E529 of 2024 for robbery, rape and sexual assault.
9. Learned Prosecution Counsel, Ms. Kigira, submitted that the accused went into hiding after the incident and used an alias at South B Hospital where he sought treatment and gave a false narrative. The State asked the court to take judicial notice of the “spike” in femicide cases. Counsel submitted that the security of the accused could not be guaranteed owing to public outrage over the incident. She referred to paragraph 26 of the affidavit on protests in “11 counties on 27th January 2024 to protest the slaying of women”.
10. The learned prosecution counsel also stated that the court should ensure the security of witnesses, the integrity of their evidence and the safety of the deceased’s family.
11. Learned counsel for the victim’s family, Mr. Kinuthia, associated himself fully with the submissions by Ms. Kigira and the recommendations in the pre-bail report. In his view, the course of justice can only be secured by pre-trial detention coupled with an order to fast-track the case.
12. I take the following view of the matter. No witnesses have taken to the stand yet. Furthermore, the accused is presumed innocent. Under Article 49(1)(h) of the [Constitution](#), as read together with Article 50 (2) and section 123 A (1) of the [Criminal Procedure Code](#), he is entitled to bail unless there be compelling circumstances. The burden to establish such reasons rests squarely on the prosecution.
13. Regarding the phrase, compelling reasons, I am well guided by [Republic v Danford Kabage Mwangi](#), High Court, Nyeri, Criminal Case 8 of 2016. I also concur with my brother, Gikonyo J, in [Republic v Joktan Mayende & 3 others](#), High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where he stated-

But more light is shed by the [Black’s Law Dictionary](#) 7th Edition. And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.

14. I have also paid heed to the [Judiciary & Bond Guidelines](#). Finally, the overarching objective of bail is to ensure the accused attends trial. See [Michael Juma Oyamo & another v Republic](#) [supra]; [Muraguri v](#)



Republic [1989] KLR 181; *R v Fredrick Ole Leliman & 4 others*, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.

15. When I juxtapose those principles against the materials before the court, I find as follows. The accused has a family residing in Kisii County. His father has undertaken to stand surety for him. It has now emerged that the accused holds a travel passport. That by itself is not a good ground for denial of bail. What would be material is evidence tending to show that he is a flight-risk.
16. Firstly, the alleged homicide occurred on 3rd January 2024. The accused was arrested the following day following a tip-off by the public. At the time of his arrest, he was undergoing treatment at Mbagathi Hospital. There has been no meaningful rebuttal to the averment by the investigating officer that when he first sought treatment at South B Hospital, he signed off as Frederick Opondo as per the treatment notes marked AC3. He also narrated to the clinical officer that he was stabbed by thieves.
17. Like I stated earlier, the pre-bail report is unfavourable. At pages 2, 3 and 4, it paints the picture of a reclusive and rebellious person who smokes bhang. To be fair to the accused, he has demonstrable skills in graphic design and runs a company styled Afrogorithm. He is also an accomplished reggae artist with 8 albums to boot and a substantial following on his YouTube channel titled Rebellious Monk.
18. I have taken into account that the accused is also facing other serious charges at Ruiru Law Courts CRC E529 of 2024 for robbery, rape and sexual assault. But it bears repeating that he is still deemed innocent and that he was accorded bail at Ruiru.
19. I have then tied that fact to the charge of murder now confronting the accused. The Director of Public Prosecutions informs the High Court that on the night of 3rd January 2024 at Papino Apartments, South B in Makadara Sub-County within Nairobi County he murdered Starlet Wahu.
20. When I weigh the gravity of this charge, the stage of the trial and the other matters I highlighted in paragraphs 16, 17 and 18 above, I cannot state with any confidence that the accused will not abscond.
21. I have also taken into consideration the views of the victim's family. The *Victims Protection Act* 2014 now requires that the views of the victim's family be considered at this stage. Victims are equally protected by section 10 of the *Act* from intimidation or harassment by the accused.
22. The family is afraid that the accused will interfere with witnesses or flee from the jurisdiction of the court. But I have not seen any credible evidence of threats to the witnesses. It is true that some witnesses are known to the accused but that would not be a sufficient ground. What is material is that the homicide has drained the deceased's mother "physically and emotionally" and led to "a spike in her blood pressure and sugar".
23. The prosecution allege that the safety of the accused may be in jeopardy. True, there were demonstrations in 11 counties against the rising cases of femicide. This may well be ameliorated by a relocation order. However, learned counsel for the accused conceded in his submissions that when the accused attended a court session at Makadara, he was assaulted by members of the public. I thus find that in all the circumstances of this case, the court cannot guarantee the safety of the accused.
24. The upshot is that there are strong and compelling reasons for denial of bail. I accordingly decline to grant bail at this stage. However, in the interests of justice, I direct that that this trial shall be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE 2024.



KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused virtually.

Mr. Mutuma holding brief for Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Kinuthia watching brief for the victim's family.

Mr. E. Ombuna, Court Assistant.

