



State v Osunga (Criminal Case E027 of 2024) [2024] KEHC 7565 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E027 OF 2024
DO OGEMBO, J
JUNE 20, 2024**

BETWEEN

STATE PROSECUTION

AND

DAVID ODHIAMBO OSUNGA ACCUSED

RULING

1. The accused, David Odhiambo Osonga, charged with the offence of murder contrary to Section 203 of the *Penal Code* as read with Section 204 of the *Penal Code*, has made an application to be released on bond pending the determination of his case. The prosecution opposes this application basically on two grounds. First, if released the accused is likely to interfere with the prosecution witnesses, four of whom are his family members. And secondly, on the ground of accused own safety and security. That family members of deceased have planned revenge on accused. It was noted that the right to bail is not an absolute right.
2. In response, Ms. Onono for the accused, submitted that such threatened witnesses ought to be placed under witness protection and that it is the duty of the state to offer security to citizens including the accused.
3. I have considered this application and the objection raised to it by the prosecution side. Under Article 49 (1) (h), of the *Constitution* of Kenya:

“An arrested person has the right; - to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
4. The *Constitution* of Kenya therefore affords every accused person, irrespective of the nature of the charges that they face, the right to bail. The right however, is not absolute and may be denied where it is sworn by the prosecution, that there exists any compelling reasons. These are reasons that are strong enough to justify denial of the right to bail.



5. The first reason advanced by the prosecution herein in opposing this application is that if released, the accused is likely to interfere with prosecution witnesses, at least four of whom are relatives of the accused. An example has been given of at least one who is yet to record any statement after receiving certain threats. This ground, to me, raises a serious issue. This court has a duty to ensure that the evidence of either side is preserved so that at the end of it all, the court may have the opportunity to wholly consider the evidence and come to a fair conclusion. The court will be failing in this duty if it could have the accused placed on bond only for him to interfere with the prosecution witnesses and evidence. The four witnesses alluded to by the prosecution are family members of the accused. And at least I witness is yet to record any statement allegedly due to threats or interference. To preserve the evidence of these witnesses, this court is persuaded by the submissions of the prosecution that it would be proper to remand the accused in custody till the evidence of these four witnesses are taken by the court.
6. As to the second ground based on the safety and security of the accused himself, with respect, the prosecution availed no evidence to sustain this ground. The prosecution's objection on this ground is therefore mere and unfounded fears which cannot amount to a compelling reason. I dismiss this objection.
7. In all, I am convinced that the prosecution has shown the existence of at least one compelling reason good enough to justify the denial of the right to bail to the accused, at this stage of the trial. I therefore dismiss the application of the accused to be released on bail and I order that accused be remanded in custody till the evidence of the four prosecution witnesses, family members of the accused is taken by the court. In that event, the accused shall be at liberty to reapply to be released on bail. It is so ordered.

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

D. O. OGEMBO

JUDGE

20/6/2024

Court

Ruling read out in court in presence of Mr. Ochieng for Ms. Onono, the accused and Ms. Kerubo for State.

D. O. OGEMBO

JUDGE

10/6/2024

