



**Ouma alias Nut v Republic (Criminal Case 64 of 2023)
[2024] KEHC 8560 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 64 OF 2023
DR KAVEDZA, J
JULY 15, 2024**

BETWEEN

ANNE ADHIAMBO OUMA ALIAS NUT ACCUSED

AND

REPUBLIC PROSECUTOR

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 ([Cap 63](#)) Laws of Kenya. The particulars of the offence are that on 15th September 2023 at Woodley Annex Estate area in Kilimani Sub County within Nairobi County murdered Eric Onchari Maigo. The accused took plea and pleaded not guilty to the offence of murder.
2. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. In response, PC CPL Patrick Boge a filed an affidavit dated 8th November 2023 in opposition to bond. The averments made were that after the commission of the offence, the accused fled from the scene of crime. She has a criminal record, having been previously committed to Dagoretti Girls Rehabilitation School in 2017 after being convicted for the offence of stealing. That she escaped from the Institution and has been on the loose since until her arrest for the offence charged. That despite being over the age of 18 years, she has no national identity card and is therefore not registered. She is a flight risk and there is a likelihood that she will not attend court if released on bail.
4. Zebedee Onchari, the victim's brother also filed an affidavit in opposition to bond dated 13th December 2023. He averred that the accused has no fixed abode. One of the victims is a minor, and there is a risk of interference by the accused. That these are compelling reasons for denial of bail during trial.
5. In response, the accused's advocate filed a replying affidavit dated 31st January 2024. He averred that the accused has a right to bail despite the seriousness of the charges levelled against her. She is not a



flight risk as alleged and there is no evidence that she will flee the jurisdiction of the court if released. In addition, the accused is a minor, and there is no evidence on record that she is an adult. There is also no evidence that the accused will interfere with prosecution witnesses as alleged. She has a right to be presumed innocent. Counsel deponed that the court should grant reasonable bail terms.

6. I have considered the application, the response, and the applicable law. The issue for determination is whether there are compelling reasons to deny the accused reasonable bail/bond terms.
7. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
8. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

In such a determination the courts are to factor the following exceptions to limit the right to bail;

- (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
9. The constitution of Kenya specifically requires under Article 49(h) that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons why the accused should not be released on bail.
 10. In opposition to the application for bail/bond, the investigating officer claimed that there was a likelihood that the accused was a flight risk by virtue of being on the run from a rehabilitation facility being a juvenile offender. On his part the accused through her advocate, undertook to attend court as when required to do so.
 11. The pre-bail report on record, indicated that the accused has had a disruptive and troubled childhood. She moved from home to home due to interpersonal conflicts until her arrest and subsequent incarceration in 2017. She completed her KCPE in 2022 and escaped from Rehabilitation facility. At the time of her arrest she resided with her mother in Kibera 42 area. Members of the community are



opposed to her release on bond. That the matter is still fresh and there is an outcry from the community due to gravity of the issue and tempers are yet to cool down which resulted in her mother moving from the area. That the family of the deceased appeared highly traumatized by what transpired and would like the judicial process to determine the issue.

12. From record, the pre-bail report is clear that the accused has not had a fixed abode from a young age. She has moved from one relative to another, different children homes and later rehabilitation facilities where she eventually escaped. Security concerns were also cited and the community is unwelcoming to the accused being released on bail. The impression that the court gets from the probation report is that the accused may very well suffer harm from the community and there is no way of reaching her if she absconds. Accordingly, these are compelling reasons for the denial of bail pending trial.
13. Accordingly, the accused application for bail is dismissed. The accused case will as far as possible be fast tracked since the accused will until further orders of this court be remanded in custody pending his trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JULY, 2024

D.KAVEDZA

JUDGE

