



**Republic v Kagunda (Criminal Case E006 of 2024)  
[2024] KEHC 9430 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9430 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E006 OF 2024**

**J WAKIAGA, J  
JULY 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ELIUD MAINA KAGUNDA ..... ACCUSED**

**RULING**

1. The accused is charge with the offence of murder contrary Section 203 as read with Section 204 of the [Criminal Procedure Code](#) to which he pleaded not guilty.
2. By an application under certificate of urgency dated 23<sup>rd</sup> April 2024, the accused sought to be admitted to bond/bail pending trial on the ground that there were no compelling reasons to deny him bail.
3. The application was supported by an affidavit in which he stated that he had never been on the wrong side of the law, was not a flight risk and a man with a wife, children and grandchildren, engaging in large scale tea farming.

As is the practice of this Court based on my understand and reading of Article 49 of the [Constitution](#), that is to say, right to bond is constitutionally granted and it is not for any accused or arrested person to apply for the same at the time of plea taking, I directed the prosecution to file if any an affidavit stating compelling reasons if any to enable the Court limit the accused constitutional rights to bail and in compliance with the bail and bond policy guidelines called for pre-bail report at the time of plea taking.

4. In compliance with the Court’s direction, the prosecution filed an affidavit sworn by PC Calvin Malova on 8<sup>th</sup> April 2024 in which he deposed that the accused life might be in danger as the family members were yet to heal from the heinous act and the accused being the elder son of the family who was alleged to have been issuing threats to kill before and after the incidence was likely to interfere with the witnesses who were family members, thereby jeopardizing the prosecution case.



5. In the pre-bail report, it was stated that the accused's parents were elderly aged about 90 years and that the mother left home after she was threatened with death by the accused person after she filed a land case in Muranga ELC No 038 of 2021 which is still on going and subject to appeal in the Court of Appeal at Nyeri CA number E035 of 2024. It was stated that the family was divided with one side opposing the release of the accused while one side supporting the same.
6. It was contended that the accused's mother had gone into hiding and that one sister who is a witness in the case had been threatened with death and the matter reported to the police. It was stated that one of the brothers of the accused who was suspected to be his accomplice had gone into hiding soon after the murder with his whereabouts being unknown.
7. His immediate family stated that should he be released on bond, they will relocate to either Mai mahiu where he has land or Dandora where he owns a plot and shall ensure that he attends Court. The local chief stated that they did not have any objection with the accused being released on bond, though one of the sons of the deceased had sworn to avenge his mother's death.

### **Determination**

8. Bail is a constitutional right of every accused person, which is only limited where there are compelling reasons advanced by the state on a balance of probability. The superior Courts have held that the following would constitute compelling reasons for purposes of bond application: the nature of the charge, the character and antecedents of the accused, likelihood of interference with witnesses, the need to protect the victims of the crime, the relationship between the accused and potential witnesses, whether the accused is a flight risk, public order and safety and whether the accused is in gainful employment. These reasons are captured in Section 123A (1) of the *Criminal Procedure Code*
9. The Court in *Republic v Francis Kimathi* [2017] eKLR stated that there may not be a scientific measure of what exactly amount to compelling reasons as that would depend on the circumstances of each case but they must be those which are arousing strong interest and attention.
10. In this matter, the accused and the victim are related. Most of the intended witnesses are related to the accused person, who being their elder brother, is likely to interfere with them and there is evidence of the threat to some of the intended prosecution witnesses leading to their mother leaving home.
11. Whereas the purpose of bond is to secure the attendance of the accused at his trial, I am satisfied that the reasons advanced by the prosecution and as corroborated through the pre-bail report are compelling enough to enable me to deny the accused bond, which I hereby do. The accused shall remain in custody until all the prosecution witnesses who are related to him have testified and their evidence secured, when he shall be at liberty to renew his application herein. And it is ordered

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 23<sup>RD</sup> DAY OF JULY 2024.**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

Mr. Mwangi for the State

Mr. T.M. Njoroge for the Accused

Quinteen - Court Assistant

