



**Republic v Makau (Criminal Case E031 of 2023)  
[2024] KEHC 8786 (KLR) (Crim) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E031 OF 2023  
K KIMONDO, J  
JULY 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PRESIAH MUTAVE MAKAU ..... ACCUSED**

**RULING**

1. The accused prays for bail pending trial.
2. His learned counsel, Mr. Mokuu, submitted that bail is a constitutional right under Article 49 (1) (h); and, that the prosecution has not advanced any compelling reasons for denial of bail. In particular, there is no basis for the assertion that the accused will interfere with the evidence of her minor son; or, that she is a flight risk. Counsel conveyed the undertaking by the accused that she will attend her trial; and, to abide by all conditions for her bond.
3. The Director of Public Prosecutions opposed the application. The primary objection is that the accused’s eight-year-old son is a key or eye-witness to the homicide. Accordingly, bail should be withheld until he testifies.
4. I should add that the Court called for a pre-bail report and which was filed on 19<sup>th</sup> June 2024 under the hand of Ms. Margaret Aduol, Probation Officer. It recommends bail but only after the testimony of the vulnerable witness.
5. I take the following view of the matter. The accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the 2<sup>nd</sup> May 2023 at Kiambiu area, California in Kamukunji Sub-County within Nairobi County she murdered Tylon Madoya Ahinga.



6. Those remain allegations; and the accused is presumed innocent. Under Article 49 (1) (h) of the Constitution, she is entitled to bail unless there be compelling circumstances.
7. The overarching objective of bail is to ensure that the accused attends trial. See Muraguri v Republic [1989] KLR 181; 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.
8. From the pre-bail report, the accused and the deceased had separated. Their eight-year-old son, LJA [particulars withheld] was living with the deceased who had since remarried. The alleged homicide occurred in the deceased's house in the presence of the minor. It bears repeating that all those remain allegations for now. The minor is currently living with his paternal grandparents.
9. Accordingly, and in the unique circumstances of this case, I readily find that the minor remains a vulnerable key witness; and, that the likelihood of interference by the accused is not far-fetched.
10. Secondly, I have taken into account the circumstances of the victim's family. The Victims Protection Act now requires that the views of the victim's family be considered at this stage. They are still bitter with the sudden loss of their loved one. Their concerns are captured at pages 5 and 6 of the pre-bail report.
11. There are thus compelling reasons for denial of bail. Bail is refused at this stage. I however direct that in the interests of justice, this trial shall be fast-tracked.

It is so ordered.

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

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

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

Mr. Mokuu for the accused.

Mr. E. Ombuna, Court Assistant.

