



**Republic v Gitonga (Criminal Case E025 of 2024)  
[2024] KEHC 8633 (KLR) (Crim) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E025 OF 2024  
K KIMONDO, J  
JULY 18, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**LAWRENCE NDEGEA GITONGA ..... ACCUSED**

**RULING**

1. Lawrence Ndegea Gitonga (hereafter the accused) is charged with the murder of Juanta Mbulwa Nzomo (hereafter the deceased). He now seeks bail pending his trial. There are two notice of motion dated 23<sup>rd</sup> April 2024 and 14<sup>th</sup> May 2024 all founded upon depositions of the applicant.
2. In addition, the applicant swore a further affidavit largely in reply to the averments by PC Cyrus Wambua, the investigating officer, made in his affidavit dated 8<sup>th</sup> May 2024.
3. It is thus apparent that the prayer for bail is opposed by the Republic. I should add that the Court called for a pre-bail report which was filed on 8<sup>th</sup> May 2024 under the hand of Ms. Mercy Kanyangi, Probation Officer.
4. The applicant filed submissions on 15<sup>th</sup> May 2024. Learned counsel for the accused, Mr. Swaka, 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 has a fixed abode, is not a flight-risk and undertakes not to interfere with witnesses.
5. In the supplementary affidavit, the applicant is categorical that he will not interfere with any witness. Learned counsel submitted that the mere fact that the accused runs a tour company or holds a travel passport is not sufficient ground to deny him bail.



6. 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](#).
7. The Republic on the other hand relied on the affidavit of the investigating officer above-mentioned. He deposed that the accused was living in rented premises whose lease cannot now be ascertained. In addition, the owner of the AirBNB premises where the alleged homicide occurred has expressed fears for her safety granted that she interacted with the accused.
8. Learned Prosecution Counsel, Ms. Kigira, submitted that the right to bail is not absolute. She pleaded with the Court to protect potential witnesses, the integrity of their evidence and the safety of the deceased's family. She asked the court to take judicial notice of the rise in femicide cases. The investigating officer deposed at paragraph 10 that there has been public outrage over the killings that led to protests in "11 counties on 27<sup>th</sup> January 2024 to protest the slaying of women" and that releasing the accused will disturb peace and public order. I note however that the protests referred to pre-date the present case.
9. The learned prosecution counsel also argued that the accused is a flight-risk since he travels in and out of the country regularly. He or his associates may also compromise evidence particularly some CCTV footage relating to the incident.
10. 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.
11. 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](#) 7<sup>th</sup> 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](#).

12. 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.
13. When I juxtapose those principles against the materials before the court, I find as follows. From the pre-bail report, the accused is married and has a small baby born while he was in police custody. They were residing in rental premises in Thome, Nairobi but his wife has since relocated. The accused's parents are retired civil servants. His sister and uncle are willing to stand surety for him. I cannot then say that merely because he lived in rental premises, he has no fixed abode.
14. 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.



15. 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.
16. The pre-bail report that the deceased's parents "are devastated by the death of their first-born child [in] whom they had invested so much". The father is bitter and yearns for justice. They are emphatic that bail should be withheld.
17. I have considered that the homicide occurred a few months ago. The Director of Public Prosecutions informs the High Court that on 2<sup>nd</sup> March 2024 at White House Apartments, Thome Area, Kasarani Sub-County within Nairobi County he murdered the deceased.
18. When I weigh the gravity of this charge, the stage of the trial, I cannot state with any confidence that the accused will not abscond. Secondly, the accused used to reside around the locus in quo. A key witness said to be the proprietor of the subject apartments, and who as in contact with the accused, has expressed fears over her life. A mere relocation order would not adequately secure the witness or her evidence.
19. The upshot is that there remains 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 18<sup>TH</sup> DAY OF JULY 2024.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Team in the presence of-

Accused virtually.

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

Mr. E. Ombuna, Court Assistant.

