



**Republic v Keinan (Criminal Case E003 of 2024)
[2024] KEHC 8627 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2024**

**JN ONYIEGO, J
JULY 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDI HASSAN KEINAN ACCUSED

RULING

1. The accused person faces a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 12.05.2024 at Eltutu area, Hirimani Ward, Tana North Sub County within Tana County, he murdered one Mohammud Mohamed Adhan.
2. He was arraigned in court on 21-06-2024 and upon the charge being read to him, he pleaded not guilty hence a plea of not guilty entered.
3. Mr. Bosire, counsel for the accused person, made an oral application for bail pending trial arguing that the same was his constitutional right. Mr. Kihara, the learned prosecutor vehemently opposed the same noting that the family of the victim was likely to avenge their kin’s death.
4. Mr. Bosire contended that the accused was constitutionally-entitled to bail pending trial since he was innocent till proved otherwise. He urged that if admitted to bail and/or bond terms, he would thus stay away from the family of the victim and the community. On his part, the prosecution relied on the pre-bail report which according to the probation officer, the accused person was not suitable for bond as the victim’s family together with the community had not calmed down.
5. It is on the basis of the foregoing that this Court has been called upon to determine the bail application herein.
6. The foundation of bail or bond in Kenya is the Constitution and the Criminal Procedure Code, Cap 75 of the Laws of Kenya (hereinafter referred to as ‘the CPC’).



7. Article 49(1)(h) of *the Constitution* states as follows:
- “An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or a trial, unless there are compelling reasons not to be released.”
8. Section 123(A) of the CPC sets out exceptions to the right to bail or bond. The provision was brought on board with a view to align the CPC with *the Constitution*. It provides that:
- (1) Subject to Article 49 (1) (h) of *the constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all relevant circumstances and in particular -a)the nature of seriousness of the offence; b)the character, antecedents, associations and community ties of the accused person; c)the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and 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 as failed to surrender to custody and that if released on bail (whether or not subject to conditions), it is likely that he would fail to surrender to custody; b) Should be kept in custody for his own protection.”
9. The rationale behind bail or bond in Kenya is premised on the constitutional provision under Article 50(2)(a) of *the Constitution* that an accused is presumed innocent until the contrary is proved.
10. In bail or bond applications, the primary consideration must always be the ability of the accused person to attend trial. The only exception remains where compelling reasons are demonstrated. Ibrahim, J (as he then was) in *Republic vs Danson Mgunya & Another* [2010] eKLR described the right to bail as an “inalienable right” by holding that;
- “The result of the foregoing is that a murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”
11. Therefore, in granting bail, the trial court is called upon to exercise its discretion and, if there are no compelling reasons to deny an accused person bail or bond, the trial court should exercise its discretion in favour of the accused person.
12. I am aware that both *the Constitution* and the CPC do not define what ‘compelling reasons’ are. However, in the case of *Republic v Joktan Mayende & 3 Others* [2012] eKLR, *Mohamed Abdurrahman Said & Another v Republic* [2012] eKLR, *Wilson Thirimba v DPP* [2012] eKLR, among others, the respective Courts reverted to the meaning of the word ‘compelling’ as defined in the Concise Oxford Dictionary, 9th Edition as ‘rousing, strong, interest, attention, conviction or admiration’.
13. Similarly, in the case of *Antonio Jacobie Snyders vs The State* (A455/2015) 2015 ZAGPPHC 618, the High Court in South Africa dismissed an appeal against denial of bail on the basis of the fact that the community was up in arms as it found it necessary to voice its opinion regarding the conduct of the appellant. The accused’s concession relating to his safety meant that it would not be wise to release him on bail. Indeed, the accused conceded that the community would not accept him back with open arms and that there existed some enmity between him and the community.
14. It therefore follows that a Court while exercising its discretion in dealing with a bail and bond application must ‘consider all relevant factors and determine whether individually or cumulatively they



warrant a finding that circumstances of an exceptional nature exist which justify his or her release' and must also balance "between the liberty interests of the accused person and the interests of society.

15. Of importance to note is the fact that the said compelling reasons must be demonstrated. In this case, the prosecution's contention is based on the fact that the victim's family is likely to avenge for the death of their kin while the accused person has urged that should he be admitted to bail or bond terms, he would keep off the said village.
16. It is my humble view that in as much as the prosecution opposed the application by the accused person, this court should not lose sight of the fact that the right to bail or bond is one of those rights under the Bill of Rights whose enforcement is aimed at preserving the dignity of individuals and communities, the promotion of social justice and the realization of the potential of all human beings.
17. However, considering that the family of the accused and the community in general are opposed to the release of the accused on bail and that they are geared towards revenge, this court should act with restraint in releasing the accused. Accused's safety is paramount. Where the court is forewarned of possible attack on the accused if released, it would be imprudent to risk by releasing the accused.
18. In view of these family and community negative sentiments, I am persuaded that it is not the right time to release the accused on bail. In that context, I am satisfied that that is a compelling reason to deny the accused bail at this stage
19. For the above reasons stated, the application for bail is rejected. Accused shall remain in custody pending trial. He shall be at liberty to apply for review at some point during the trial.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 18TH DAY OF JULY 2024

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J. N. ONYIEGO

JUDGE

