



**Republic v Kithinji (Criminal Case E028 of 2024)
[2024] KEHC 8616 (KLR) (Crim) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E028 OF 2024
K KIMONDO, J
JULY 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KEVIN KOBIA KITHINJI ACCUSED

RULING

1. Kevin Kobia Kithinji (hereafter the accused) is charged with the murder of Alex Mwendwa Mathei (hereafter the deceased). He now seeks bail pending his trial.
2. On the date he took plea, the Director of Public Prosecutions (hereafter the DPP) informed the court that he would be opposing bail on the grounds set out in the deposition Cpl Samuel Gichuki, one of the investigating officers, dated 4th April 2024. The objections are three-fold: that the accused is a flight-risk; that he is likely to interfere with the witnesses; and, that his own security would be in jeopardy.
3. The accused has filed a replying affidavit sworn on 21st June 2024 contesting those averments.
4. Learned counsel for the accused, Mr. Kamau Waweru, submitted that the DPP has failed to demonstrate any compelling reason for denial of bail. He stated that the accused was a barber at Umoja at a business styled Starlock Barber Shop. It is thus misleading to say that he has no fixed abode. It was argued that he is prepared to relocate to his rural home in Amatu Village, Tigania West, to reside with his father and grandfather.
5. Counsel implored me to find that the accused has strong family ties and is not a flight-risk as claimed by the State. Regarding the likelihood to interfere with witnesses, the accused insisted that there is no such evidence. He also undertook not to visit the locus in quo and to comply with all conditions for 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 submitted that the accused went into hiding after the incident and that some alleged accomplices remain at large. Counsel submitted that the accused was beaten by an incensed public as per the Occurrence Book Number 5/4/3/24. Accordingly, the security of the accused cannot be guaranteed.
8. The learned prosecution, Ms. Njoroge, counsel also stated that the court should ensure the security of witnesses, the integrity of their evidence and the safety of the deceased's family.
9. 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.
10. 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 7th 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*.

11. 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.
12. When I juxtapose those principles against the materials before the court, I find as follows. Whereas the accused has disclosed where he worked as a barber, he has not made any reference to a place of abode in Nairobi. It may be presumed he lived in the city; and it would not be fair to say that merely because he did not own the property, he has no fixed abode.
13. The point however is that the DPP has deposed that he has no fixed abode. That fact has not been controverted. It is true that he can re-locate to Tigania West to live with his father and grandfather. But the accused is an adult. This can obviously be ameliorated by a suitable order limiting his movements or prohibiting him from leaving the jurisdiction of the court.
14. But it is not lost on me that the alleged homicide occurred on 3rd March 2024. The accused was arrested the following day by members of the public who beat him up. He suffered serious injuries and had to be taken by the police to Mama Lucy Hospital for treatment before being booked by the police. I thus find that in all the circumstances of this case, the court cannot guarantee the safety of the accused.
15. In addition, the Republic states that some accomplices remain at large. The DPP informs the High Court that on 3rd March 2024 at Baraka Area, Dandora, Kamukunji Sub-County within Nairobi County jointly with others not before the court murdered the deceased. That fact coupled with familiarity of some witnesses means that the likelihood of interference with witnesses is not farfetched.



16. When I weigh the gravity of this charge, the likely sentence, the stage of the trial and the other matters I highlighted in paragraphs 12 to 15 above, I cannot state with any confidence that the accused will not abscond.
17. The upshot is that there are 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 16TH DAY OF JULY 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused virtually.

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

Ms. Njagi holding brief for Mr. Kamau Waweru for the accused.

Mr. E. Ombuna, Court Assistant.

