



**Republic v Dure (Criminal Case E017 of 2024)
[2024] KEHC 10101 (KLR) (Crim) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E017 OF 2024
LN MUTENDE, J
AUGUST 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

YUSUF ZAKARIA DURE RESPONDENT

RULING

1. Yusuf Zakaria Dure, the accused herein, was indicted for the murder of Mohamed Osman Abdulee, in contravention of Section 203 as read with Section 204 of the *Penal Code*. The offence is stated to have been committed on 16/1/20254 at Eastleigh Section One in Starehe Sub-County within Nairobi County.
2. Having denied the information, the accused seeks to be released on bail pending trial on grounds that bail is a constitutional right; he is not a flight risk as he does not have a passport; and, that he is a first offender.
3. The application is opposed by the State/prosecution through an affidavit deposed by No. 116562 PC Abdinassir Bulle who depones that there are compelling reasons that limit the accused right to bail. That the accused is a flight risk and that he does not have a place of abode. Lastly, that there is likelihood of witness interference as the accused is known to the witnesses who are neighbours and colleagues at Eastleigh area having worked in the same company where the offence took place.
4. The application was disposed through written submissions where the accused urged that his phone was confiscated during arrest and therefore he was not able to give contacts of his relatives. That he is married and he has four children, his family resides at Eastleigh where they have rented a house, and, he does not have a passport.



5. That no civilian witnesses had been identified to state the likelihood of interference with witnesses. That the most important consideration is whether he will turn up for trial as determined in the case of *Republic v Bernard Jakait* (2021) eKLR.
6. In response thereto, based on depositions in the replying affidavit and the findings in the Pre-bail report, the State submits that the accused did not offer information of his place of abode. That the probation officer also noted that the accused does not have any relative to help him post bail. Further details in the report are that the accused was born in Isiolo and he moved to Nakuru where he stayed for 6 years, thereafter, he moved to Kisumu and later came to Nairobi. That the community in Eastleigh did not know where his wife shifted to.
7. Finally, that the Investigating Officer's affidavit demonstrates that three eye witnesses who worked with the accused and deceased are well known to the accused. The accused also acknowledged during interrogation by the probation officer that the State witnesses are colleagues and neighbours within Eastleigh. The prosecution relies on the case of *Republic v Rotich & 2 Others* 2024 KEHC 748 where the court held that workplace relation makes witnesses vulnerable to manipulation, harm, intimidation, harassment, tampering, blackmail and abuse by the accused.
8. The question of bail is constitutional, an inalienable right unless there are compelling reasons requiring the accused to be denied bond. Article 49(1)(h) of the *Constitution* of Kenya provides that:

An arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.
9. What amounts to compelling reasons is not defined in the *Constitution*, however, the provisions of Section 123 A of the *Criminal Procedure Code* and the Judiciary *Bail & Bond policy guidelines* list compelling reasons to include the fact that the accused is a flight risk, that he lacks a place of abode, the accused security, witness interference and the severity of the offence.
10. To establish the fact of existence of compelling reasons the prosecution must demonstrate existence of the same, as such it should not be mere assertions in the affidavit or express fears without substantive evidence. The fact that the accused has lived in many towns does not mean he is a flight risk. This is because an accused is allowed to enjoy his freedom of movement and association at all times unless it is limited by the law.
11. The accused has submitted that his wife and children are at Eastleigh where they had been residing at the time of arrest. The prosecution's case is that the wife relocated and her whereabouts are not known, further, that the accused relatives cannot be traced. The latter was indirectly admitted by the accused who failed to give the contacts of his relatives. Nothing stopped him from moving court to assist him obtain call logs and contacts from his phone which is held by the police.
12. The conclusion to be reached is that the court will be stranded in tracing the accused in the event he does not turn up for his trial. The house at Eastleigh was a rental house and with further developments that his wife and children have relocated to an unknown place. Certainly, this is not favourable to the accused.
13. It is also noteworthy that the witnesses are neighbours and workmates, the place of the offence is also said to be the work place. The accused suggests that bail terms can mitigate these risk factor. These would include immediate relocation where he will be far from Eastleigh and also away from the vulnerable witnesses. It is apparent that the neighbour and colleague relationship creates ample environment for witness contact and interference.



14. Finally, it is notable that the gravity of the offence and the severity of the sentence will most likely make the accused to take some measures to interfere with the witness testimony. The evidence must be preserved as a matter of course and in the wider interest of justice.
15. For reasons given, the application for bail fails and is denied until key witnesses testify and/ or circumstances change.
16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 6TH DAY OF AUGUST, 2024.

L. N. MUTENDE

JUDGE

