



**Republic v Kamau (Criminal Case E019 of 2024)
[2024] KEHC 10032 (KLR) (Crim) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CRIMINAL
CRIMINAL CASE E019 OF 2024
LN MUTENDE, J
AUGUST 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN KAMANDE KAMAU ACCUSED

RULING

1. John Kamande Kamau, the accused is charged with the murder of Lizabeth Madaraka Stanley alias Elizabeth Karimi Ngiria which occurred on 24/12/2023 at Korogocho in Starehe Sub-County within Nairobi County.
2. Having denied the allegations put forth the accused seeks to be released on bail pending trial, an application that is opposed by the State.
3. Through an affidavit deposed by No. 65020 PC Mohammed Lokit of DCI Starehe, it is averred that the deceased and the accused were in a relationship. That the two had children and used to live in the same plot at Korogocho area as they co-parented them.
4. That one of the children is a witness, hence the close parental relation is also ground for witness interference such that the minor may give eschewed evidence or fail to testify; and, that the accused was charged with a serious offence which carries the death penalty.
5. In response to the averments, the accused reiterates that he should benefit from the presumption of innocence. That he has a fixed abode at Korogocho where he was arrested. That witness interference is an offence, however, stringent bond terms can be issued to ensure he does not step in Korogocho and to prevent him from contacting witnesses, and, sureties will also ensure he does not abscond.



6. According to the Pre-bail report filed, the accused is 62 years old; the family prays for free bond as it does not have collateral and cannot afford cash bail. The children are with the deceased step sister at Babadogo. The accused and the deceased wife had been married for 10 years and were blessed with 2 children. Their marriage was not recognized by the family, and, the victim's family could not be found.
7. The community stated that the accused has good character and lives in peaceful co-existence with others. That they used to drink with the deceased and could have fights. He earns a low income and was supported by well-wishers. The community vouches for his release, he has good social ties and that he will get a place of abode.
8. The probation officer recommends that the accused be released on reasonable bond terms.
9. It is submitted by the defence that although one of the witnesses is a neighbour, stringent bond terms can be given to assist. That the probation report is a mere recommendation which may be rejected or adopted by the court and that the objective of bond is to secure the attendance of accused .
10. It is urged by the State/prosecution that the defence has not made any proposal on where the accused will relocate to which the accused responded that he will not step in Korogocho.
11. I have considered rival arguments. The right to bail is a constitutional right protected and guaranteed under the *Constitution*. Article 49 (1) (h) provides for the right to bail unless compelling reasons exist requiring the accused being incarcerated. The prosecution is hence obligated to adduce strong forceful and compelling reasons warranting the court to deny the accused bail.
12. In opposing bail, the State argues that there is likelihood of interference with witnesses, the accused lacks a place of abode and lastly, the accused faces a serious offence which has a severe sentence upon conviction .
13. Section 203 as read with Section 204 of the *Penal Code* provides for the offence of murder and the corresponding penalty as the death sentence. However, the court has discretion to mete out a lesser and more lenient sentence following the decision of the Supreme Court in *Francis Karioko Muruatetu v Republic* (2017) eKLR. In addition, murder is aailable offence in the current constitutional dispensation.
14. The severity of the offence may not be a plausible ground to deny the accused bail. The principle is that the accused has a right to be presumed innocent until all allegations against him are proved beyond doubt.
15. On the question of lack of a place of abode, the accused lived at Korogocho with the deceased and mother of his children; he states that this is where his fixed abode is. He admitted in further submissions that one of the witnesses is a neighbour, the community also commented on the issue stating that he will get a place of abode.
16. The alternative place of abode is not indicated though it was important in this case where the prosecution has expressed its fear of witness interference and that the offence took place within the plot. The accused cannot to be allowed to go back to the same neighbourhood since witness testimony might be hindered or influenced in some way.
17. Witness interference which may include intimidation or improperly influencing witnesses so as to prevent them from testifying may be a plausible reason to deter an accused from benefiting from bail. The fact that one of the witnesses is the accused child is on record, the deceased mother who is also his estranged wife and neighbours are all competent witnesses whose evidence must be protected as a matter of course and for the wider interest of justice.



18. In the case of *Republic v Gerald Mutuku Nyalita & another* (2015)eKLR, the court held that close family or relationship is not a whimsical ground but it demonstrates likelihood of witness interference. This being the case, it will be imperative for the accused child herein to testify before the question of bail can be re-considered.

19. It is so ordered.

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

L. N. MUTENDE

JUDGE

