



**Republic v Bukuno (Criminal Case E024 of 2024)  
[2024] KEHC 9864 (KLR) (Crim) (5 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9864 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E024 OF 2024**

**LN MUTENDE, J  
AUGUST 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BONAYA ELEMA BUKUNO ..... ACCUSED**

**RULING**

1. Bonaya Elema Bukuno, the accused, is charged with the offence of murder of Tadicha Godana Gababa alias Mohammed which occurred on 5/3/2024 at Garnet Energy Company within Njiru area within Nairobi County. The information was brought under the provisions of Section 203 as read with Section 204 of the *Penal Code*.
2. The accused denied the information and seeks release on bail/ bond pending trial an application that is opposed by the State/ Prosecution, through an affidavit deposed by No. 61123 Sergeant Philip Mutisya of Directorate of Criminal Investigations, Ruai, the Investigating Officer who contends that the accused and the deceased were employed at the same company where the offence occurred. That one of the employees witnessed the fatal assault which resulted into the death. That the accused also declined intervention from his workmates who wanted to take the deceased to hospital. That the actions were captured on CCTV hence the prosecution has a strong case with overwhelming evidence and the accused may abscond trial if he is granted bond.
3. That eye witnesses are known to the accused and the persons still works for the accused employer , therefore, there is legitimate anxiety that the accused will influence the witnesses. Lastly , that the accused does not have family ties and his residence remains unknown which diminishes the chances of tracing him.



4. The accused responded to the prosecution's case through his further affidavit on the application for bail. He states that he has a permanent abode within the republic and that he undertakes not to interfere with witnesses or the deceased family. Further, that he is presumed innocent until proven guilty.
5. The accused filed written submissions, his case is that every accused is presumed innocent until proven guilty as a right to fair trial and that he is also entitled to his constitutional right of liberty unless legitimate reasons are existent for this right to be curtailed.
6. That bail is an inalienable right and he is not a flight risk and does not have plans of absconding trial or interfering with the witnesses.
7. That the respondent has not tendered evidence to support its contention that he will interfere with witnesses, that the fact that the witnesses are well known to the accused and that he still works with the former employer is not a plausible reason to deny him bail.
8. An accused person's right to bail is a constitutional right guaranteed under Article 49(1)(h) of the Constitution and can only be limited where the prosecution adduces compelling reasons. Bail is also granted by the court after considering circumstances as a whole and the interest of justice in the matter. The affidavit filed by Sgt Philip Mutisya lists the following alleged compelling reasons:

The question of the accused not having a fixed abode; whether there is likelihood that he will interfere with witnesses; the severity of the offence and sentence; and, the strength of the prosecution case.

9. Witness interference was addressed in the case of Republic v. Dwight Sagaray & 4 Others, 2013 eKLR where the court held that evidence must be presented demonstrating the relationship and manner interference is likely to occur. It was stated that;

“...specific instances of or likelihood of interference with witnesses including the relationship between the accused and the witnesses or victims, must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond.”

10. An argument raised by the respondent that some of the witnesses are employees of the company and that they are eye witnesses is not disputed; further, the scene of crime is said to be the work place and most likely the witnesses testifying in the case are known and accessible to the accused unless strict measures are taken to prevent this. The accused admits that he still works for the same employer, therefore, will be going back to the scene of crime and will have close and unrestricted contact with eye witnesses. There is a high chance that witnesses may be influenced in such circumstances.
11. In Republic v Gerald Mutuku Nyalita & another [2015] eKLR, which is persuasive, the High Court held that;

“In considering the likelihood of interference with witnesses as a compelling ground to refuse bail in terms of Article 49 (1) (h) of the Constitution of Kenya, the Prosecution must, in my view, demonstrate a more than whimsical probability of interference. It must be shown that the accused persons are in such close family, filial or other relationship which creates an environment of control and influence of the witness by the accused person such as to interfere with the ability of the witness to give evidence before the court in a free and truthful manner thereby affecting either the credibility of the witness in his or her testimony before the court or the very ability of the witness to attend court. The tenderness of age or the mental acuity of the witness may be factors to be considered in the determination as to the



likelihood of interference. The nature of the testimony of the witnesses – as eye-witness or circumstantial – is also relevant...”

12. Witness interference is also described as an act of self-preservation where accused facing serious charges, as the instant one, have the tendency of either taking flight or making the evidence against them disappear. The presence of the accused may also affect witnesses’ mindset and prevent them from testifying.
13. In *Republic v Kiteme Maangi* (2017) eKLR, this court held that  
“Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight—  
Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety.”
14. The proximity of the witnesses and the severity of the offence all lead to a legitimate apprehension that the accused will interfere with witnesses, the prosecution’s claims are therefore not speculative as alleged by the accused.
15. The fact that he has a place of abode is contested, the prosecution fear that he might not be traced. The accused response is that the prosecution can determine his residence from the phone numbers given during investigations. The accused has to demonstrate that he will be away from scene of crime and also within the court’s reach such that his ability to attend all court sessions is not hampered. Sufficient information must be obtained to persuade the court that he is able to comply with bond terms.
16. The upshot of the above is that the application for bail is declined at this stage. An application for review may be made when circumstances change.
17. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 5<sup>TH</sup> DAY OF AUGUST, 2024.**

**L. N. MUTENDE**  
**JUDGE**

