



**Republic v Maweu (Criminal Case E078 of 2023)
[2024] KEHC 9868 (KLR) (Crim) (5 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9868 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E078 OF 2023
LN MUTENDE, J
AUGUST 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES KAKUMI MAWEU ALIAS MAKUMI ACCUSED

RULING

1. James Kakumi Maweu alias Makumi, the accused, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, particulars being that on 10/2/2023 at Sinai slums area in Makadara Sub-County within Nairobi County, he murdered Onesmus Musembi Nyamai alias Wamotheu.
2. The accused denied the allegation and now seeks release on bail/bond pending trial.
3. The State objects to the release of the accused on bond through an affidavit deposed by No.88914 PC Chris Mugo who depones that the accused and the deceased were friends and roommates in a single room at Sinai slums, Industrial area where they had stayed for 3years. On the fateful date they were involved in a fight which resulted into the deceased sustaining serious injuries and the accused left the house.
4. On 12/2/2023, the accused and his two friends went to check on him. They had to break the door to gain entry and they found the deceased lying dead on his bed. The accused disappeared from the scene and was arrested 7 months after the incident, on 27/10/2023 .That his actions demonstrate that he is a flight risk and that he will abscond trial if he is released.



5. That there is a high chance of interfering with witnesses, who are close friends and neighbours. That the accused does not have work and a known fixed abode other than the house he was sharing with the deceased at Sinai which will make it hard to trace him.
6. That the seriousness of the charge and the prosecution's irrefutable evidence coupled with the likelihood of being sentenced to death all form incentives to abscond trial and /or to interfere with witnesses.
7. The accused filed an affidavit in response to the prosecution's averments. He reiterates that he works at Donholm as a panel beater in a workshop; he is a father of three children aged 23, 22 and 17 years. He resides at Kayole where he has a fixed abode; the deceased was a great friend and they lived together for 3 years; the statements in the affidavits are based on conjecture and are misleading the court; and, that no warrant of arrest was issued to prove that he disappeared from the crime scene.
8. That there is no evidence that he is a flight risk, denial of bond unjustly restricts his freedom and also exposes children to challenges in education, guidance and support.
9. That he had been out for 7 months and there is no evidence or allegation of witness interference during this period which makes the prosecution's claim speculative and farfetched.
10. That he will lose his loyal customers which will significantly affect his financial stability and ability to sustain a livelihood.
11. That the State has a duty under Article 21 (1) of the *Constitution* to protect, promote and fulfil his fundamental rights and freedoms in the Bill of rights. Reliance in this respect is placed on the case of *Michael Juma Oyamo & Another -Vs- Republic* (2019) eKLR.
12. Through written submissions, the accused submits that the prosecution relied on conjecture and made baseless statements. That the threshold to render the accused a flight risk was not met, there was no warrant of arrest against him at the time of arrest, and, there is no attempt to leave the jurisdiction of the court.
13. That the allegations of witness interference are speculative, the accused does not have a habit of skipping bail and the court may withdraw the bond terms if he does. That our legal system is based on presumption of innocence pursuant to Article 49 (1) (h) and 50 (2) of the *Constitution*, and, the accused urges that pretrial detention should not be used to punish him.
14. To capture views of victims a social inquiry was conducted by the probation department that filed a pre-bail report. It is stated that the accused smokes bhang and this could easily affect his judgement. Bail history could not be established as he had not been through the justice system. The deceased was 53 years and is survived by 5 children the youngest being in form 1. He was separated from his wife but remained in touch being neighbours within Sinai slums.
15. The secondary victim oppose the application, the deceased family knows the witnesses and they identified the accused before he was arrested. That the accused is a flight risk. The community at Lunga lunga oppose the application for bail, they argue that the accused is likely to abscond as he has no fixed abode. That the witnesses are from Sinai and there is fear that they might be harmed. The accused was at large for several months.
16. The accused and the deceased are also related, the community from the village also oppose bail stating that traditional ceremony has not been performed and that he is still an outcast and he can be harmed by the community. The accused family prays for free bond, the rest of the kin were not ready to discuss the case.



17. I have considered submissions by the accused, the affidavit by the State in opposition of bond and the response thereto by the accused. article 49 (1) (h) of the Constitution 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.
18. Compelling reasons are not defined in the Constitution but the case of *Republic -vs- Joktan Mayende & 3 Others* (2012)eKLR described compelling reasons as forceful and strong grounds. It was stated that:
- “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.”
19. An accused person’s liberty shall not be limited as he is presumed innocent until proven otherwise. Section 123 A of the Criminal Procedure Code lists the considerations for bail and circumstances when it may be denied. It provides thus:
- (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 the relevant circumstances and in particular—
 - (a) The nature or 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 fulfillment 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 has 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.
20. The list is not exhaustive and each matter must be determined on its merit. The paramount consideration is whether the accused will turn up for his trial.
21. Compelling reasons raised are the question of the accused being a flight risk; the witnesses are known to him and he will influence them; the severity of the offence and sentence is an incentive to abscond. Lastly that he does not have a place of abode.
22. The argument of the prosecution that the accused is a flight risk is founded on the issue of the accused having fled the place of abode he shared with the deceased for three years on realizing the deceased had passed only to be arrested 7 months later
23. On the question of the severity of the offence and sentence as an incentive to abscond; it is premature to rule that the severity of the offence and final sentence is an incentive to abscond, this is because the accused is presumed innocent until the court finds him guilty. There are also instances of suspects who



are charged with misdemeanors but they end up jumping bail. Each case must be determined on its merit. The accused must be given the benefit of doubt until the accusations, statements and allegations in the charge sheet and committal bundle served on him are proved.

24. The victim's family indicated that the accused wife and children are known to the deceased family, this demonstrates a likelihood of interference with witnesses which cannot be ruled out by dint of close family association. The accused and the deceased are also alleged to come from the same village or ancestral background.
25. Further that the accused has stated that he has a fixed abode in Kayole but has not demonstrated an alternative residence in the event the court requires certain measures to prevent witness interference or threat to his security.
26. The probation officer recommended that the accused does not have strong social support to help him during the trial for instance his family was not willing to discuss and give its input, his mother is willing to assist but she proposes free bond which cannot be favourable in the instant case. The accused and the deceased are also alleged to come from the same village or ancestral background. The village community has expressed their position that he is still an outcast and that traditional ceremonies have not been conducted.
27. The proximity to witnesses and close family friend relation and the lack of social and family support prove that he might not turn up for trial and that witness testimony may be hampered to the detriment of the trial.
28. The upshot of the above is that the application for bail fails and is dismissed.
29. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 5TH DAY OF AUGUST, 2024.

L. N. MUTENDE

JUDGE

