



**Republic v Osunga (Criminal Case E072 of 2023)  
[2024] KEHC 9865 (KLR) (Crim) (5 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9865 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E072 OF 2023  
LN MUTENDE, J  
AUGUST 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JARED OCHIENG OSUNGA ALIAS MATIRI ..... ACCUSED**

**RULING**

1. Jared Ochieng Osunga alias Matiri, the accused, is charged with the murder of Kelvin Kairu Kiiria which occurred on 15/8/2021 at Dandora Phase IV within Nairobi County.
2. Having denied the charges the accused seeks release on bond pending trial, an application that is opposed by the State. Through an affidavit deposed by No. 82308 Corporal Josephat Wafula from Directorate of Criminal Investigations, Buruburu, the Investigating Officer in the matter, it is averred that the accused disappeared from his residence at Dandora phase IV only to be traced after 2 years at Donholm within Nairobi where he was in hiding; and, at the time of arrest he was violent to the arresting officers and he attempted to escape.
3. That the accused is a flight risk as he does not have a fixed abode; key witnesses in the case were his neighbours at Dandora Phase IV, people he is likely to interfere with. That the seriousness of the offence and death penalty to be imposed, if convicted is an incentive to abscond trial and there is also a probability that he will flee the jurisdiction of the court.
4. In reply thereto, the accused denies the allegation that he relocated after the offence stating that he had been residing at Dandora Phase IV in Awendo area and that he worked at Donholm as a gas shop attendant. That he was a personal assistant to the Member of County Assembly of Dandora Ward 4 between 2019 and 2023 and was not hiding as averred. That the police have his phone number; and, the



location can clearly show that he was in Donholm during the day and later could be found at Dandora where he lived.

5. That he is the sole breadwinner of his family of three children, a wife, and he opened a gas sales business jointly with his uncle in Donholm. He also provides for his aged and ailing parents who are also at Donholm
6. That he was summoned to Dandora police station after the demise of the deceased and he never disobeyed any summons. He never interfered with witnesses from the date of the offence and nothing has changed to deny him bail hence not a flight risk as alleged. That he sustained gunshot injuries during the arrest, he was hospitalized at Kenyatta National Hospital for 3 months where he underwent surgery and metal plates inserted in both legs and he is scheduled for another surgery. He prays for bond to enable him attend to his health.
7. Further, that the shooting incident and misuse of fire arms by the police is under investigations by Independent Police Oversight Authority and the police intend to have him in hospital so that he does not follow up his case.
8. Following directions by the court, the application was to be disposed through written submissions, but, only the State written submissions are on record. It is submitted that the right to bail is not absolute and can be denied where the prosecution has advanced sufficient grounds. That the accused is a flight risk, the accused admits that he was arrested on 15/8/2023 at Donholm and further admits what transpired during arrest. That the pre-bail report indicates that the accused came to Nairobi in the year 2009 and settled in Dandora Phase 4 where he was accommodated by his uncle Bitus Okaka Oluoch. That he stayed in Dandora for 13 years had been residing at Pipeline in a rental house for the last 2 years .
9. That the change of resident documented in the prebail report corroborates the prosecution's case that the accused evaded arrest for 2 years. Further that it is probable that the accused was fleeing from the jurisdiction of the court considering the circumstances of arrest. His uncle has also not furnished details of the arrangements he has with the accused and the intended place of abode. That there is a possibility that he will interfere with witnesses.
10. The State is apprehensive of the security of witnesses and that the community may pose a danger to accused. Reliance is placed on the case of *Republic -Vs- Teresia Mueni Kilonzo & Another* (2015) eklr and further argued that bond should be denied where the prosecution's case may be jeopardized.
11. The pre-bail report indicates that the accused is known for his exploits in patronizing vegetable vendors in Dandora area, he is also a dangerous person who is feared for involvement in money extortion and has been suspected for many violent crimes.
12. That the accused comes from Homabay County where he grew up in his maternal grandmother's home. He came to Nairobi in the year 2009 and was employed by his uncle Bitus Oluoch Okaka in Buruburu where his uncle resides, as a loader for his uncle's vehicle transporting gas to Busia, Kericho and Kisii, he also worked at his uncle's mechanic shop at ACK garage area between the years 2008-2013.
13. That accused has been married since 2012, he has 2 children the last one is at pre-school and the other in grade 5. His wife is at Homabay in Sindo area. His uncle vouches for his release on bond and states that the accused is trustworthy and he entrusted his business to him. That the accused also interacted with several officers in the course of business. The accused's friend also hopes to bail him out. His relatives at rural home vouch for his release.



14. Accused was described as heavy user of illicit alcohol. The Probation Officer noted that he sustained injuries during arrest, uses crutches and must be supported to move around.
15. Victim views were obtained from the deceased parents. The deceased was 20 years old who did KCSE examination in the year 2018. He was a member of a youth group member and engaged in chicken rearing program. They argue that the accused is a flight risk after he escaped arrest for two years. That key witnesses may develop cold feet and that the accused made threats of harming the deceased and is a threat to the family which lives in Dandora.
16. The community is of the view that the accused release will pose a danger to the witnesses and that the accused will also endanger the community. That the accused is part of the local ODM movement and is also part of a vigilante group and criminal gangs in Dandora responsible for several reported cases of murder.
17. The probation officer recommends that considering the accused condition and the alleged evasion of arrest, the accused be admitted to bail at a later date when key witnesses testify and that the court considers stringent bond terms.
18. I have considered the affidavit opposing bail, the response thereto, arguments by the State and the pre-bail report. The right to bail is a solemn and protected right, it should be available unless the prosecution adduces sufficient and compelling reasons requiring the accused incarceration during pendency of the case.
19. The accused has been indicted for a serious offence which also has severe penalty if convicted, however, the offence of murder is bailable. The accused is also presumed innocent until proven guilty. What must be established is whether the accused will turn up for his trial. The question of interference with witnesses is also key since witness interference not only causes emotional damage to victims but also impede fair justice system.
20. An accused person's right to bail pending trial is a constitutional one as envisaged under Article 49 (1) (h) of the [Constitution](#) that provide as follows:  
An accused person has the right-
  - (h) To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.
21. The Collins Dictionary defines a compelling reason to be an argument that convinces one that something is true. It is argued by the State that the accused is a flight risk; there is a high chance that he will interfere with or intimidate witnesses; the accused does not have a fixed abode. The accused security is at risk, he is also a threat to the community.
22. As to the issue whether the accused is a flight risk, the offence occurred on the 15/8/2021 and the reason for the accused untimely arrest is stated to be based on the prosecution claim that the accused relocated from Dandora Phase IV where the offence was committed and was traced at Donholm. Circumstances under which he sustained gunshot injuries are attributed to the attempt to escape which may establish the allegation of being a flight risk and that he would flee if he is released during trial.
23. The accused has stated that he works at Donholm and that he had been residing at Dandora at the time of arrest, he also argues that the shooting and misuse of fire arms incidences are under investigations, allegations the court cannot delve into at this stage.



24. It is alleged that the accused relocated from his residence in Dandora. This is a case where a witness has testified confirming that the accused used to be at the ODM offices in the area. Circumstances under which he was not found clearly points to him having relocated as stated.
25. The accused did admit prosecution's assertion and told court that he resides at Dandora and that he engages in employment at Donholm where he works at his uncle's gas shop, he calls this an investment. The question of the engagement is supported by his uncle although he did not specify that he has such business in Donholm.
26. The accused personal circumstances also have to be considered. This is because the accused has a wife and children to take care of, his health status and constant medical attention also prevent the chances of taking flight. The accused uncle also vouched for his release and that competent sureties may be availed to assist him comply with the bond terms.
27. The accused is alleged to be part of a vigilante group which is responsible for crimes within the area, but, no report, police record or substantial proof that the accused is part of criminal gangs was adduced.
28. The witnesses are from Dandora and there is a possibility of witness interference, the probation officer suggests that bond ought to be denied until key witnesses testify. Witness interference is a matter of fact and evidence.
29. In *Republic -Vs- Antony Karanja Njeru* [2016] eKLR , a persuasive case, it was stated that:

“...It has long been recognized that an accused who interferes with witnesses does not qualify to be granted bail. In *Panju v R* (1973) E.A. 282 the High Court held that where an allegation of interference with witnesses is used as a ground of opposing release on bail, the prosecution must produce evidence. This was the practice under the independence Constitution of 1963. The requirement to produce evidence to support an allegation of interference with witnesses is in principle good law. The reason being that a decision of a court must be based on evidence.”
30. It is trite that granting bond is a discretionary exercise, the court must consider the circumstances as a whole and each case be determined on merit and resolved in the best interest of justice. See the case of *KKK -Vs- Republic* (2017) eKLR, the Court held that

“The key is in adopting a path that ensures prosecution of the offences in a manner that is least restrictive of enjoyment of the accused's right to bail.”
31. The right to bail is part of right to fair trial and pretrial detention should be avoided. In this case, the accused health status and need for social and family support together with the presumption of innocence are favourable factors. But, the demonstrated question of the accused having not been traced two years down the line; and, the attempt to escape resulting into shooting is a question that cannot be overlooked. It therefore calls for denial of bail until key witnesses testify.
32. The upshot of the above is that the accused is denied bail unless circumstances change.
33. 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**

