



**Republic v Wawira (Criminal Application E021 of 2024)
[2024] KEHC 9862 (KLR) (Crim) (5 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPLICATION E021 OF 2024
LN MUTENDE, J
AUGUST 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARTIN EGESA WAWIRA ACCUSED

RULING

1. Martim Egesa Wawira, the accused, was charged with murder of Florence Sironyo which occurred on 19/2/2024 at Pipeline area in Embakasi Sub-County.
2. The charges were disputed and the accused prays for bond pending trial,
3. The application was opposed as per the affidavit of No.59124 Corporal Philip Tonui. The deceased in this case was aged 7 years. The accused is the biological father and competent witnesses reside with him. That the accused will return to the same house with the said key witnesses.
4. The pre-bail report was further filed in the case, the death shocked the mother of the deceased who was co-parenting with the accused. That the community is still hostile .
5. The community from the accused rural home vouches for his release and stated that the accused will be supported by his family. That the family plans to have him stay in Nairobi which will address the question of animosity on the ground
6. The deceased mother relocated to her matrimonial home and stays with the accused mother. The accused family on the other hand has an uncle who has land in Kakamega and they are willing to use it as collateral.



7. Bail is a constitutional right enshrined in *the Constitution*. The objective of bail is to enable the accused attend trial, the court should prevent pretrial detention unless the State/Prosecution proves that circumstances in the case do not support the accused release on bail.
8. The burden of proof is on the prosecution who must also prove existence of compelling reasons that are beyond speculation. The right to bail is an alienable right. Further, the accused right to freedom of movement, which is also affected by pretrial detention, must also be protected and be limited by circumstances allowed by law.
9. Section 123 A of the *Criminal Procedure Code* lists compelling reasons. It provides that:
 - 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.
10. The main issue for determination in this case is whether the accused is likely to interfere with witnesses.
11. In the case of *Republic -Vs- Ali Hussein Ali* HCCR 53/2019 (NAJ), the court rightly stated that:

“That mere allegations of a likelihood of interference without proof, remains mere allegations.”
12. *In Republic -Vs- Gerald Mutuku Nyalita & Another* [2015] eKLR , a case that 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...”

13. The court has been told that the deceased was the accused child, that one of the witnesses is a nuclear family member and also that the child’s mother is currently residing with the accused mother. The community at his rural home supports the application if he settles in Nairobi since things have not cooled down.
14. The key witnesses will be within his reach, the relationship between the accused and these witnesses and the influential position he holds as a husband and a coparent all create a genuine fear that witness testimony will be hampered.
15. The upshot of the above is that the application for bail fails and is dismissed at this stage. An application for review may be made following change of circumstances.
16. It is so ordered.

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

L. N. MUTENDE

JUDGE

