



**Kimani v Republic (Criminal Case E005 of 2024)
[2024] KEHC 13822 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 13822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E005 OF 2024
SN MUTUKU, J
SEPTEMBER 16, 2024**

BETWEEN

SAMMY KURIA KIMANI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Sammy Kuria Kimani, the accused, has brought this application under Articles 48 and 49 (1) (h), 50 (2) (a) and 50 (2) (j) of *the Constitution* of Kenya, 2010 and Section 123 of the Criminal Procedure Code seeking to be admitted to bail pending the hearing and determination of this case. He is also seeking to be supplied with the inventory, witness statements or any other documentary evidence the prosecution wishes to rely on during trial.
2. The grounds in support of the application are that the Applicant took Plea before this Honourable Court where he pleaded not guilty to the Charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. He is charged with killing Stephen Kimani Githua on 7th May 2024 at Eselenkei area in Mashuuru South Sub-County within Kajiado County.
3. The Applicant has stated that by dint of Article 50 (2) (a) of *the Constitution*, he is presumed innocent until the contrary is proved following a trial. That Article 49 (1)(b) of *the Constitution* accords the Applicant the right to be released on reasonable bail/ bond terms pending hearing and conclusion of the present trial unless compelling reasons why he should not be released on bail/bond exist.
4. The Applicant has stated that Article 48 of *the Constitution* of Kenya safeguards his right to access to justice without any impediments; that bail/ bond terms only serve the purpose of guaranteeing an accused person's attendance during trial and cannot be used as a form of punishment or for other collateral purposes; that upon release on reasonable bail/ bond terms, the Applicant will avail himself to the Court, as and when required to do so, during the entirety of the trial; that the Applicant shall



abide by any, and all, conditions that shall be set by this Honourable Court in granting him bail/bond and that the Applicant shall not interfere with witnesses in the matter or any investigations should any be carried out.

5. The Applicant has advanced further grounds in support of this application that he has, up to the date of making this application, cooperated fully in the investigations in this matter; that he is a Kenyan citizen with a fixed abode at Naivasha within the jurisdiction of this honorable court; that he does not pose any flight risk as he is eager to clear his name of the charges levelled against him; that he is a married man with a young family to provide for and care for; that his continued incarceration will greatly and negatively prejudice his young family; that it is in the best interests of the Applicant's family that he be admitted to bail/bond and that no compelling reasons have been advanced by the Respondent to warrant the denial of the Applicant's release on bail/bond.
6. The Application is opposed by the prosecution through the Replying Affidavit of CPL Nicks Karani. The main grounds in opposition are that there is overwhelming evidence against the accused and this might motivate him to abscond; that he has no fixed abode having fled from his rented house in Kikuyu Town; that he might intimidate key witnesses and that he is a flight risk because he fled to Namanga after committing the offence.
7. The application was argued orally. Mr Onderi, learned counsel for the Applicant reiterated the grounds advanced in support of the application. He relied on Michael Juma Oyamo & another v Republic [2019] eKLR to support the arguments that bail is a constitutional right that can only be limited upon the court being satisfied that there exist compelling reasons.
8. Counsel for the Respondent, Ms Akunja also reiterated the grounds advanced in the Replying Affidavit and submitted that bail/bond is not an absolute right and can be denied where compelling reasons exist. She urged that should the court be inclined to allow the application, then the trial should be fast-tracked to take evidence of the vulnerable witnesses.
9. I have considered this application and the grounds in support of the same and against the application. Bail/bond is a constitutional right under Article 49(1) (h) which can only be denied when there are compelling reasons. In R v Joktan Malende & 3 Others Criminal Case No. 55 of 2009, the court defined compelling reasons to mean:

“..... 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 standards set by *the Constitution*.”
10. The prosecution bears the burden of demonstrating compelling reasons. I have considered the arguments advanced that the Applicant is a flight risk. It has not been demonstrated that he did anything to point towards his intention to flee the jurisdiction other than stating that he was arrested in Namanga to which it was responded that the Applicant was arrested in Kikuyu and not Namanga.
11. The prosecution said that the Applicant will intimidate the witnesses. It is my view that these fears are not substantiated by cogent evidence. Besides, in granting bail/bond, the court puts in place terms and conditions of bond to ensure that the trial would not be compromised.
12. The existence of overwhelming evidence has been held not to be a compelling reason for the reason that until that evidence is tested through cross-examination in a trial it cannot be said to be overwhelming by just reading the witness statements.



13. It is my considered view, after considering the rival arguments that the prosecution has not provided compelling reasons to persuade this court to deny the Applicant bail/bond. This court is however mindful that all parties to this case deserve justice and ought to ensure that the trial is not compromised by either the Applicant or any other person.
14. Consequently, I allow the application on the following terms and conditions:
 - i. That the Applicant shall be released on a bond of Kenya Shillings One Million (Kshs 1,000,000) with one surety of similar amount.
 - ii. That the Applicant shall not contact the witnesses during the pendency of this trial.
 - iii. That the Applicant shall attend court at all times required until the case is heard and determined.
 - iv. That failure to abide by any of these conditions shall lead to cancellation of bond and placement of the Applicant in custody for the remainder of the trial until the case is concluded.
15. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 16TH SEPTEMBER 2024.

S. N. MUTUKU

JUDGE

