



Republic v Thiiri & 2 others (Criminal Case E042 of 2023 & E007 of 2024 (Consolidated)) [2024] KEHC 11092 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E042 OF 2023 & E007 OF 2024 (CONSOLIDATED)
DO CHEPKWONY, J
SEPTEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ALEX KINOTI THIIRI 1ST ACCUSED

ALVIN LIKONO KIKAYA 2ND ACCUSED

FIDELIS WAMBUI KABUGI 3RD ACCUSED

RULING

1. The Accused personS Alex Kinoti Thiiri, Alvin Likono Kikaya And Fidelis Wambui Kabugi are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of offence are that:

“On the 26th day of August, 2023 at Gatongora area in Ruiru Sub County within Kiambu County, the accused murdered one Peter Wangai Ngugi”
3. The 1st and 2nd Accused persons had initially taken plea in the matter but later the prosecution sought to consolidate the charge with the charge against the 3rd accused person in Criminal Case No.E001 of 2024 which was allowed with no objection from their Counsel on 15th August, 2024 to allow for plea to be taken in respect of the consolidated charge. The accused persons pleaded ‘Not Guilty’ to the consolidated charge and the court called for Pre Bail Report in respect to each of the accused persons to be filed and availed in court for consideration. Of their application to be released on bail and bond.
4. The Bail Information Report for the 1st accused person Alex Kinoti Thiiri and the 2nd Accused person Alvin Likono Kikaya were both filed on 3rd July, 2024 while that of the 3rd Accused person Fidelis Wambui Kabugi was filed on 19th September, 2024.



5. In coming with the reports on each accused person, the probation officer looked at the 1st accused persons' family circumstances, their personal circumstances and means, use of drugs and substances, previous adherence to bond/license terms, seriousness of the offence, victim's concerns and sentiments, community ties and views of the investigating officer, bail sureties and securities and came up with its conclusion and recommendations for each accused respectively, which the court has considered in this ruling.
6. With respect to the 1st Accused person, the probation officer has stated that he is 27 years old and was working as a Safaricom agent whereby he was selling their sim cards prior to his arrest. It is reported that he has a supportive family who are willing to welcome him home, and undertake to pool their resources to secure his release and ensure he abides by the terms the court shall grant for his release. This confirmed he will be living with his aunt in Rongai who will act as the contact person. On the community, it is reported that it is not opposed to his release since he does not have criminal history. However, on the part of the victim's family, they have indicated that they are opposed to his release until the matter is concluded citing fear for their lives since the accused person physically knows them by having met in court during the mentions. The Probation Officer has recommended that the 1st accused person is suitable for admission to bail and bond terms but invite the court to consider the views of the victim's family.
7. In respect to the 2nd Accused person, the probation officer has stated that he is a 26 years old student of Kenyatta University undertaking Statistics and Programming studies but which he had deferred due to lack of school fees. It is reported that his family prays for lenient bail and bond terms and confirms that they are willing to pool their resources to secure his release as the family land is yet to be subdivided. They indicated that once released he will live with his mother in Nakuru who will ensure he attends court whenever he is required. On the part of the area administration, it stated that the accused has been of good behaviour and does not have previous criminal behaviour and was thus not opposed to his released. As for the victim's family they are opposed to the release of the 2nd Accused person as they express fear. The Probation Officer's recommendations are that the 2nd accused person is suitable for admission of bail and bond terms but invite the court to consider the views of the victim's family.
8. On the part of the 3rd Accused person, the Probation Officer states that she comes from a polygamous family based in Muranga and her parents are small scale farmers. It is reported that the 3rd Accused is a single parent to a 14 year old son who now lives with his grandparents. It is also reported that that the 3rd accused person admits that she occasionally takes alcohol but assures that this will not interfere with her adherence to the bail/bond terms. On the part of the victim's family, it stated that the death of their son was painful as he died at the peak of his age being 31 years, leaving behind a young family of a wife and three children. That the victim's family is against the release of the accused person on bond/bail terms until the matter comes to an end. On the part of the community, it has been stated that the 3rd Accused person does not have criminal dealings neither does her the family and it is not opposed to her being granted bail/bond terms. On the part of surety, the probation officer reported that her parents are ready to deposit a title deed of their parcel of land in court and that they will also act as the contact persons. The Probation Officer has recommended that the 3rd Accused person may be considered for release on bail/bond terms but invite the court to consider the views of the victim's family.

Analysis and Determination

9. The accused persons have through their counsel sought to be released on bond and bail pending the hearing and determination of the main suit. The same has not been opposed.



10. It is trite that the right to Bail and bond is provided under Article 49(1)(h) of *the Constitution* it which provides that: -
- ‘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.’
11. In considering whether or not to order for the release of the accused on bond/bail, the court ought to consider if the reasons tendered in objecting the said release are compelling enough to warrant the denial of bail and bond terms. The Court in the case of *Republic v Joseph Thiongo Waweru & 17 Others* [2017] eKLR defined compelling reasons as follows:
- “The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”
12. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, also provides for various factors which ought to be considered in a bail/bond application as follows:-
- (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 fulfilment 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.
13. In this particular case, the court has considered the oral application made by the Accused persons through their counsel and the Pre Bail Reports filed in respect of each one of them. Upon going through each of this report the court finds that the same are favourable in respect of each of the accused person. It is reported that they all have supportive families who are willing to pull resources to secure their release on bond. On the sentiments of the victim’s family, it is said that they are opposed to the release of the Accused persons since the family is in fear that since the accused persons have seen them in court during mentions. On this, the court finds that there is no evidence or information provided to court whether directly or indirectly to show that the accused persons have interfered with any of



the prosecution witnesses or the victim's family. The court also notes that the community and local administration are also in support of the Accused persons being granted bail/bond terms.

14. In the circumstances the court proceeds to allow the application by the accused persons for release on bond on the following terms:-
- a. Each accused person may be released on his own bond of Kshs.500,000.00 with one surety of a similar amount.
 - b. In the alternative, each accused to be released on cash bail of Kshs.300,000.00.
 - c. Each accused to provide a contact person and his or her full particulars to court.
 - d. Each accused to refrain from interfering with any member of the family and the victims's or any of their witnesses in this case.
 - e. Each accused to attend court whenever she/she is required until the trial is determined.
 - f. Failure, to comply with any of the above conditions will render the bond terms cancelled and accused remanded in custody during the pendency of his/her trial.
 - g. Hearing on 11th and 12th February, 2025.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF SEPTEMBER , 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Ndeda counsel for the State

M/S Waiganjo holding brief for Mr. Mbiyu Kamau for 3rd Accused person

Court Assistant - Martin

