



**Republic v Mwihungi (Criminal Case E001 of 2023)
[2024] KEHC 10816 (KLR) (Crim) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E001 OF 2023
CM KARIUKI, J
SEPTEMBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GABRIEL WAGURA MWIHUNGI ALIAS GABI ACCUSED

RULING

1. The Accused is charged with the Offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 20th September 2023 at Kwa Ngara within Nakuru West Sub County within Nakuru County Murdered Eunice Wambui Mwangi.
2. He pleaded not guilty, and his Advocate applied for his release on bail/bond. The Prosecution opposed the application. The court ordered the Pre-bail Report (PBR) and Investigation Officer (I.O) affidavit on the circumstances of the accused and the victim to be filed.
3. The report (PBR) was filed, but the investigating officer did not file his affidavit in court. The court gave both sides a chance to argue about the content of the report (PBR) filed. The defense argued that the primary concern is the local community from which the accused and victim hail, the accused family, and the accused family are ready to re-allocate the accused. There is a threat of the accused being lynched if he happens to be spotted in the said locality.
4. However, the Prosecution submitted that there are compelling reasons to deny the bond as covered by the filed report (PBR). I have perused the PBR.
5. The report's findings and conclusion are that the victim's family and the local community are very fearful of the accused being released on bond. His accused act is said to have generated intense anger in



equal measure. That there is a threat to lynch him and also fear of him interfering with the witnesses. The report concludes that, at the moment, the accused is not suitable for release on bond.

6. The court, considering both sides' submissions and the PBR report, finds that the grant of bond/bail at the moment is not conducive. This is because, although bond/bail is a constitutional right, that same right is limited where there are compelling reasons/grounds to deny the bail/bond. Among such grounds is the disclosure that the accused life is not guaranteed as he may be lynched as the local community is both angry and fearful of the accused.
7. I gather also that there is no guarantee that the accused will not interfere with witnesses. Further, there is no guarantee that the accused will not abscond. Further, though it was submitted that the accused family is willing to relocate him to another place, this was a mere submission with no factual proposal, probably a relative affidavit specifying the alternative place plus a guarantee of the accused availability for trial.
8. In the premise, the court will differ the verdict on granting bond until the witnesses who are afraid of testifying if the accused is released on bond/bail testify and until there is a guarantee of the change of circumstances on the ground to be confirmed by the Investigating Officer affidavit and accused relative affidavit.
9. For now, the application is declined.

RULING DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 16TH DAY OF SEPTEMBER 2024.

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CHARLES KARIUKI
JUDGE

