



REPUBLIC OF KENYA



**Macharia v Republic (Criminal Case E017 of 2024)
[2024] KEHC 12932 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12932 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E017 OF 2024
CW GITHUA, J
OCTOBER 23, 2024**

BETWEEN

MILKA MUTHONI MACHARIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Milka Muthoni Macharia is charged in two counts with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars are that on 30th June 2024 at Ireri village in Mathioya Sub-County of Muranga County, she murdered Liam Macharia and Terry Wambui.
3. On 17th September 2024, she denied the charges in both counts. Her learned counsel, Mr. Ndonga made an oral application for bond or bail pending trial on reasonable conditions.
4. The application was opposed by the prosecution through the affidavit sworn on 29th July 2024 by Chief Inspector William Lesikemol, the investigating officer. The gist of the depositions in the affidavit are that the prosecution contests accused's admission to bond or bail for her own protection as, if released, her life would be in danger given that her family members were yet to heal from the emotional wounds they suffered after loosing the two deceased persons who were minors. Secondly, it was averred that the accused may relocate to an unknown destination since the house she had been living in had been burnt down. In other words, the deponent was implying that the applicant was a flight risk.
5. I have carefully considered the application and the oral submissions made before me by learned counsel Mr. Ndonga for the applicant and learned prosecution counsel Ms. Muriu for the State in support and in opposition to the application.



6. It is trite that by virtue of Article 49 (i) (h) of *the Constitution*, all accused persons irrespective of the nature and seriousness of the offence charged are entitled to admission to bond or bail on reasonable conditions pending trial unless there were compelling reasons mitigating their release. The onus of establishing compelling reasons that would justify denial of bond rests squarely on the prosecution.
7. In this case, as stated earlier, the main reasons advanced in support of the prosecution's opposition to the application are that if released, the applicant's life may be in danger as members of her family were yet to come to terms with the loss of their loved ones and may turn against her; that the applicant no longer had a fixed place of abode as the house she used to reside in had been destroyed.
8. The above reasons have however been dislodged by the findings made in the pre-bail report filed on 17th October 2024 pursuant to orders issued by this court on 17th September 2024. Contrary to the averments made in the replying affidavit, the Pre- bail report confirms that the applicants immediate family and members of her community at large supported her application for admission to bond pending trial and were ready to accept her back. The report also confirms that the applicant has a permanent place of abode at Ireri Village.
9. The Pre-bail report was prepared by a Probation Officer after making social inquiries and being an independent report, I have no reason to doubt it's contents. In view of the foregoing, I find that the reasons given by the prosecution in opposition to the applicant's application are not credible or reliable. Consequently, I am satisfied that the reasons advanced by the prosecution in this case do not constitute compelling reasons to justify denial of bond to the applicant pending her trial.
10. That said, I have noted from the Pre-bail report that the victims of the crime the applicant is accused of having committed are her two biological children. She has two other children, one is an adult and the other lives with his father. Given that the two do not live with the applicant, I find that the release of the applicant is not likely to expose their safety to risk but taking everything into account, I agree with Mr. Ndonga's submissions that the applicant requires lots of psycho-social support.
11. For the foregoing reasons, I find merit in the application and I hereby allow it on the following conditions;
 - i. The applicant will be released upon executing a bond of Kshs.500,000 with one surety of a similar amount. The surety will be approved by the Deputy Registrar of this court. The Surety to be approved to be one who undertakes to enlist the applicant for counselling or other psycho-social support.
 - ii. Once released, the applicant shall submit to psycho- support and shall attend the Hon. DR to give progress reports every first Monday of the month effective the month after her release.
 - IV) The applicant shall attend this court on all hearing dates or whenever required.
 - V) Failure to comply with any of the above conditions will lead to cancellation of her bond.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 23RD OCTOBER 2024

C.W GITHUA

JUDGE

In the Presence of:

The applicant



Mr. Ndonga for the Applicant.

Ms. Muriu/for the respondent

Ms. Susan Waiganjo, Court Assistant

