



**Republic v Nzyimi & 2 others (Criminal Case E002 of 2023)
[2023] KEHC 627 (KLR) (Crim) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E002 OF 2023
K KIMONDO, J
FEBRUARY 10, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BENEDICT MASILA NZYIMI 1ST ACCUSED

DOUGLAS MUTUA MUKITI 2ND ACCUSED

RICHARD KYULE NDONYE 3RD ACCUSED

RULING

1. The three accused persons pray for bail pending trial. Their learned counsel, Mr. Kiptoo, first made an oral application on January 16, 2023. The motion was opposed by both the Republic and counsel watching brief for the victim's family.
2. I should add that on the same date, the applicants lodged a formal notice of motion for bail predicated upon the affidavits of the 1st and 3rd accused persons. There is a replying affidavit sworn by the investigating officer, Police Constable Godana. The victim's family lawyer on the other hand filed written submissions urging the court not to release the three.
3. The application was renewed on January 30, 2021. Learned counsel submitted that there are no compelling reasons to deny the motion. Reliance was made on articles 49 and 50 of the *Constitution*, as read together with section 123 A (1) of the *Criminal Procedure Code*. He implored me to release the accused on the same terms they had been granted by the lower court at the preliminary stages of these proceedings.
4. The Republic contends that the accused face a grave charge and are a flight risk and particularly the 3rd accused who failed to disclose that he holds a travel passport. Learned Prosecution counsel submitted



that the incident occurred in a bar frequented by the accused; and, that two of the witnesses work there. In addition, they hold sensitive CCTV footage. Counsel added that there remains palpable anger at the *locus in quo*; and, that in all the circumstances of this case, the accused should remain in custody.

5. Learned counsel for the victim's family associated himself fully with the prosecutor save to add that he relied on the written submissions filed on January 23, 2023. I am alive that the [Victims Protection Act](#) now requires that the views of the victim's family be considered at this stage.
6. I take the following view of the matter. No witnesses have taken to the stand yet. It follows that all the accused are presumed innocent at this moment. Under article 49 (1) (h) of the [Constitution](#), as read together with section 123 A (1) of the [Criminal Procedure Code](#), they are entitled to bail unless there be compelling circumstances.
7. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in [Republic v Joktan Mayende & 3 others](#), High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the *Black's Law Dictionary* 7th Edition. And accordingly, 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 standard set by the [Constitution](#).

8. The overarching objective of bail is to ensure the accused attends trial. See [Michael Juma Oyamo & another v Republic](#) [supra]; [Muraguri v Republic](#) [1989] KLR 181; [R v Fredrick Ole Leliman & 4 others](#), Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
9. When I juxtapose those principles against the materials before the court, I further find as follows. Firstly, the alleged homicide occurred at a bar styled Club Ox. The accused were arrested by the public on January 2, 2023 who beat them up before handing them over to the police. All those are allegations at this stage. But it does show the angst of the public at the *locus in quo*. It also a pointer that the security of the accused may be jeopardized.
10. Secondly, the three aver that they are artists who perform magic and acrobatic shows in Kasarani Sub-County. The Information presented to the High Court indicates that the homicide took place in Zimmerman, Roysambu Sub-County. Although the three accused say they do not know the witnesses, the prosecution claims that the key witnesses reside in that locality.
11. Tied closely to that issue is that two of the witnesses work at the said bar and may hold material CCTV evidence. That fact can be mitigated by appropriate orders barring the accused from stepping foot there. But it would be foolhardy because the 1st and 3rd accused admit that they and their families reside at Maziwa and Zimmerman respectively.
12. Thirdly, the accused face a serious charge of murder. The Director of Public Prosecutions informs the High Court that on the January 2, 2023 at Zimmerman area in Roysambu Sub-County within Nairobi County they jointly murdered Moffat Njuguna.
13. There are thus the twin issues of the security for the accused and the likelihood of interference with evidence or witness. I am not persuaded that merely because the 3rd accused holds a travel passport, he is a flight-risk. If I were making a different order, I would have asked that it be deposited in court.
14. But from what I stated earlier, I find that in all the circumstances of this case, there are compelling reasons for denial of bail. I decline to grant bail at this stage. However, in the interests of justice, I direct



that that this trial shall be fast-tracked. The application may be renewed after the two witnesses above or any other vulnerable witness conclude their testimony.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF FEBRUARY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-
Accused.

Mr. Kiptoo for the accused instructed by L. H. Kiptoo Advocates.

Mr. Njengo for the family of the victim instructed by J. M. Njengo & Company Advocates.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

RULING NAIROBI HCCR EO02 OF 2023 *Republic v Benedict Nzyimi & 2 others* Page 2

