



REPUBLIC OF KENYA



**Republic v Kagombe (Criminal Case E039 of 2022)  
[2023] KEHC 564 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 564 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E039 OF 2022  
RB NGETICH, J  
FEBRUARY 8, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MOSES IRUNGU KAGOMBE ..... ACCUSED**

**RULING**

1. The accused person herein Moses Irungu Kagombe was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence is that on 18<sup>th</sup> October, 2022 at Gaitara village, Mangu location in Gatundu North Sub-County within Kiambu County murdered Alice Wanjiru Muiruri. He was arraigned in court on 14<sup>th</sup> December 2022, in the presence of his advocate Mr. Odhiambo and pleaded not guilty.
2. Mr. Kasyoka the prosecution counsel was not opposed to the accused person being granted bail/bond but urged the court to call for a pre-bail report.
3. However, an affidavit was filed on 14<sup>th</sup> December 2022 by the Investigating Officer CPL. Richard Kipsang opposing bail/bond on the ground of possible interference with the witnesses.
4. The application for bond was heard on 2<sup>nd</sup> February 2022; Ms. Ngesa counsel for the state informed the court that she is not opposed to the accused being granted bail/bond. Ms. Ngesa informed the court that the affidavit filed by the Investigating Officer was limited to the time when all witnesses had not recorded their statements. She confirmed that the prosecution intends to call fourteen (14) witnesses all of whom have recorded their statements.
5. The pre- bail report filed on 2<sup>nd</sup> February 2022, describes the accused as having a history of alcohol use but is in good health physically and mentally. The deceased is the 2<sup>nd</sup> wife of the accused. According to the report, the local administration is of the view that it is not safe to release the accused on bond/ bail for fear of his security as the community were threatening to harm him at the time of his arrest.



- The accused is willing to adhere to all the provisions of bail/bond. The sister of the accused is willing to stand as surety and ensure the accused attends court.
6. From the report, the victim's family oppose the release of the accused on bail/bond for fear of interference with witnesses.
  7. Article 49(1) (h) of *the Constitution* of Kenya provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.
  8. The prosecution is not opposed to accused person being released on reasonable bail/bond terms; Ms. Ngesa submitted that the affidavit filed by the Investigating Officer on 14<sup>th</sup> December 2022 was limited to allowing the Investigating Officer conclude the investigations and take the evidence of all witnesses in support of the prosecution case and the motive has been accomplished, there are no compelling reasons to deny accused bail.
  9. The purpose of a pre-bail report is intended to inform the court circumstances that relate to the offence and guide in determining whether to release an accused person on bond and under what terms. I note that since the preparation of the report, circumstances have changed. Witness statements have been recorded and it has been confirmed by the state counsel that the fear of interfering with witnesses no longer exist.
  10. The local administration also had fears of accused's security. The issue has not been raised. His family has promised to support him if released and ensure he attends court when required. In view of the fact that circumstances as captured in prebail report have changed. I see no reason to deny accused bond. I proceed to release him on bond on conditions set out under final orders below.
  11. Final Orders:  
Accused may be released on a bond of Kshs 1 Million with one surety of a similar amount.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2023**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Kinyua/Martin – Court Assistant

Mr. Odhiambo for Accused

Ms. Ngesa for State

Accused – Present

