



**Republic v Omweri & another (Criminal Case E035 of 2022)
[2023] KEHC 598 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E035 OF 2022
RB NGETICH, J
FEBRUARY 8, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DENNIS MICHAEL OMWERI 1ST ACCUSED

HARRISON NDUNG’U MAINA 2ND ACCUSED

RULING

1. The accused persons herein Dennis Michael Omweri and Harrison Ndung’u Maina were charged with the offence of murder contrary to section 203 as read together with section 204 of the [Penal Code](#). The particulars of the offence are that on 30th and August 31, 2022 at Karambaini shopping centre in Limuru sub-county within Kiambu county jointly murdered Joel Mung’ula Nzivo.
2. On October 19, 2022, the charge and its full particulars were read over and explained to the accused persons in the presence of their advocates. Each accused person pleaded not guilty and plea of not guilty was entered.
3. Mr Gacharia counsel for the prosecution was not opposed to the accuseds being released on bond/bail, but urged the court to call for a pre-bail report.
4. The court called for a pre-bail report which was filed on December 2, 2022.
5. On February 6, 2023, Mr Ogle the prosecution counsel informed the court that the state was not opposed to the accused being released on bond. Ms Ngochi counsel for the 1st accused urged the court to release the 1st accused on reasonable bail terms. She submitted that the accused understands the importance of attending court and his family is willing to deposit security in court.
6. The pre- bail report for the 1st accused indicates that the family of the 1st accused is willing to support him and ensure that he attends court whenever called upon. When examined by probation officer, the



accused pleaded with the court to grant him reasonable bail terms so as to continue with his parental responsibility as he is a family man. The local community leader described the 1st accused as a law abiding citizen with no criminal records in the society and does not pose any danger in the society. The local community is not opposed to the 1st accused being released on bail.

7. The pre-bail report for the 2nd accused indicate that the accused person is aware of the seriousness of the charge he is facing and he pleads with the court to release him on reasonable bail terms. The local administration stated that they are not aware of the charges 2nd accused is facing. They however stated that the 2nd accused and his family are well known, he has no criminal history and thus the local administration was not opposed to him being granted bail.
8. The victim's family oppose to the accused persons being released on bail.
9. Article 49(1)(h) of the *Constitution* provides as follows: -

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.

10. The court is vested with the discretion to grant or deny the release of an accused person on reasonable bail terms.
11. The Bail and Bond Policy Guidelines clause 4.26 which sets out judicial policy on bail as follows: -

The following procedures should apply to the bail hearing:

- a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - i. That the accused person is likely to fail to attend court proceedings; or
 - ii. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - iii. That the exception to the right to bail stipulated under section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
 - iv. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - v. That the accused person is likely to interfere with witnesses or evidence; or
 - vi. That the accused person is likely to endanger national security; or
 - vii. That it is in the public interest to detain the accused person in custody.



12. In the case of *Republic v Francis Kimathi* [2017] Eklr, the court stated as follows: -

“.... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust bill of rights enshrined in the *Constitution* ...”.

13. The prosecution has not demonstrated the existence of compelling reasons to deny the accused persons bail/bond. The pre-bail reports filed are favourable to the accused persons. In both reports, the local administration describes the accused persons as law-abiding citizens with no previous criminal records.

14. In view of the fact that no compelling reasons have been raised, I proceed to release accused on bond with conditions set out hereunder.

Final Orders: -

15. Each accused person may be released on a bond of Kshs 500,000/= with a surety of a similar amount.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 8TH DAY OF FEBRUARY, 2023

.....

RACHEL NGETICH

JUDGE

In the presence of:

Kinyua/Martin – Court Assistants

Ms. Ngochi for Accuseds

1st Accused – Present

2nd Accused – Present

Ms. Ngesa for State

