



**Republic v Wainaina (Criminal Case E034 of 2022)
[2023] KEHC 724 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E034 OF 2022
RB NGETICH, J
FEBRUARY 8, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMSON KAMERU WAINAINA ACCUSED

RULING

1. The accused herein Samson Kameru Wainaina is charged with the offence of murder contrary to section 203 as read together with section 204 of the [Penal Code](#). The particular is that on September 22, 2022 at Ruaka area in Kiambaa Sub-County within Kiambu County murdered Ivan Nangai.
2. On October 19, 2022, he was arraigned in court for a plea in the presence of his counsel Ms Ngochi. He denied the charge and a plea of not guilty was entered.
3. The prosecution counsel Mr Gacharia informed the court that there are no compelling reasons to oppose the bond but urged the court to call for a pre-bail report.
4. Ms Ngochi urged the court to grant the accused favourable bail/bond terms.
5. A pre-bail report was filed on December 2, 2022. The report indicate that the accused knows the seriousness of his crime and pleads with the court to grant him reasonable bail; in the report, the accused informed the Probation Officer that he has a five-year-old son. The local Chief described the accused as one who gets along well with his neighbours and the community at large. The area Chief further stated that the accused is not a security risk and he has no history of criminal behaviour. The grandfather of the accused is willing to deposit his title deed as security.
6. The family of the victim despite still mourning and heart broken, is not opposed to the accused being granted bail/bond.



7. The pre-bail report is favourable to the accused being granted bail/bond. The prosecution has also not given any compelling reasons to deny the accused bail/bond.

8. Article 49(1)(h) of the Constitution provides that: -

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.

9. The right to bail is not absolute; bond may be denied where it is shown to court that there are compelling reasons. The prosecution is required to inform the court by way of affidavit sworn by Investigating Officer compelling reasons that may persuade the court to deny the accused bail/bond.

10. The Bail and Bond Policy Guidelines Clause 4.26 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.

11. From the foregoing, I see no reason to deny the accused bond/bail. I therefore allow the application with conditions as captured in final orders below.

12. Final orders:

The accused 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

Martin/Kinyua – Court Assistants

Ms. Ngochi for Accused

Ms. Ngesa for State

