



**Republic v Muceri (Criminal Case E023 of 2022)
[2023] KEHC 778 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E023 OF 2022
LW GITARI, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

LAWRENCE MWIRIGI MUCERI ACCUSED

RULING

1. The accused herein is facing the charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#) (cap 63 of the Laws of Kenya). It is alleged that on June 14, 2020 at Iruma sub-location, Iruma location, in Maara sub county within Tharaka Nithi, the accused person unlawfully murdered one Joel Koome Mwangi.
2. Before this court is the application dated December 14, 2022 and filed on December 16, 2022. It is brought under the provisions of articles 49(1)(h) of the [Constitution](#) of Kenya 2020 and section 69, 114, and 116 of the [Criminal Procedure Code](#) (cap 75 of the Laws of Kenya) and seeks for orders that the applicant be released on reasonable bail/bond pending his trial.
3. The application is premised on the grounds on the face of it and supported by the affidavit of the applicant sworn on December 14, 2022. The grounds are as follows:-
 - i. That the accused person is law abiding citizen who has never been convicted of any criminal offence.
 - ii. That the accused person is already to abide by any bond terms imposed by this honorable court and ready to appear in court which so required.
 - iii. That the applicant is a resident of Chogoria where he has a permanent abode and not a flight risk and will be appearing in court when so required.



- iv. That the honourable court has inherent discretion to grant the prayers sought since there are no compelling reasons to decline the same.

These grounds are reiterated in the supporting affidavit and further that the constitution guarantees his right to bail.

4. There is a pre-bail report dated and filed on November 25, 2022. The respondent did not file a response to the application but instead opted to rely on the probation officer's report.
5. The report recommends that the award of bond be withheld until witnesses have been able to testify.
6. When the application came up for hearing, counsel for the applicant submitted that there is no compelling reason to deny the applicant bail. That the pre-bail report indicates that the applicant has never been involved in any crime or conflict with the law. It was his submission that the applicant is not at flight risk and is ready to abide by any conditions which the court may impose. He thus prayed that the application be allowed noting that this court has unfettered discretion and that the pre-bail report does not bind the court.
7. In opposing the application, the respondent submitted that while the pre-bail report is not binding on the court, it is an important report that can enable the court arrive at a fair determination. He urged the report to be persuaded by the court pointing out that there are compelling reasons for the application to be denied. The respondent submitted that the accused had been on the run for two years and as such, he is a flight risk. That the victims in this case will be scared if the accused is released before they adduce their evidence. Further, that there is a likelihood that the security of the applicant will be compromised if he is released as the pre-bail report states that members of the public may take matters in their own hands. For the foregoing reasons, the respondent prayed that the application for bail be considered after the witnesses have testified.
8. Article 50(2) (a) of the Constitution provides that:

“Every accused person has the right to a fair trial which includes the right to be presumed innocent until the contrary is proved”.
9. Pursuant to the presumption of innocence until proven guilty, an accused person has a right to be released on bail pending trial. This right is anchored on article 49(i)h of the Constitution which 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.”
10. In considering the question of bail or bond, the Judiciary's Bail and Bond Policy Guidelines, March 2015 (the “Policy”) sets out the judicial policy on granting bond. Clause 4.26 of the Policy provides 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:
 - a. That the accused person is likely to fail to attend court proceedings; or



- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.
11. It is trite that the grant or denial of bond is at the discretion of the court. The court, in exercising such discretion, is guided by law as contained in article 49(1)(h) of the *Constitution* as well as the Judiciary Bail and Bond Policy Guidelines (2015) already set out above.
 12. From the foregoing provisions, it is clear that the evidential burden is on the state to satisfy to this court why an application for bail pending trial should be disallowed. In this case, a pre-bail report was filed in respect to the accused herein. While a pre-bail report is not binding on the court, it assists it in understanding the socio-economic circumstances of the accused while setting bail or bond terms.
 13. According to the pre-bail report, the accused is known to abuse changaa and other drugs. He does not fully appreciate the gravity of the charges before him and that for two years since the subject offence was committed, the applicant has been playing hide and seek with law enforcement officers. The family of the victim is opposed to the grant of bond stressing that there has been a two-year delay before the accused was charged. The said report further states that the accused has not been bonded before and that his father has expressed a desire to post bail on his behalf.
 14. I have considered the application for bail, the submissions by the parties as well as the pre-bail report dated November 25, 2022. In my view, the contention that the accused is a flight risk is not far-fetched. It has taken two years since the commission of the offence in question for the accused to be arrested and charged. Although the bail is a constitutional right, the right is not absolute where there are compelling reasons to deny the right. The accused has been evading arrest by the law enforcers and managed to do this for a period of two years. The main or key consideration when granting bail is and has always been that the accused person will turn up for his trial. The pre-bail report states that the accused had been at large for two years but still within his community at Mutonga quarry which is expansive. He is a flight risk and there is no guarantee that he will turn up for his trial. This is a compelling reason to deny him bail.

Article 159 of the *Constitution* provides that justice must be done to all irrespective of status. In this case, the pre-bail report states that the matter has taken two years to reach court having been frustrated by hidden forces. That the victim's family will feel betrayed if the accused is bailed out before they have given evidence. It is therefore in the interest of justice that the victim's family plea that they be allowed to give evidence before bail is considered should be heeded to in the interests of justice.

Accordingly, I find that there are compelling reasons to deny the accused person bail.

Conclusion

15. In the circumstances I decline to allow the application for bail pending trial. The accused to remain in custody until the case is finalized.



DATED, SIGNED AND DELIVERED AT CHUKA THIS 2ND DAY OF FEBRUARY 2023.

L.W. GITARI

JUDGE

