



REPUBLIC OF KENYA



**Republic v Koriko (Criminal Case E008 of 2022)
[2023] KEHC 579 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E008 OF 2022
F GIKONYO, J
FEBRUARY 1, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

LEGUMOOK KORIKO ALIAS SHADRACK LEDAMA ACCUSED

RULING

1. The accused herein is facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. On December 20, 2021 the accused through his defence counsel Ms Wekesa orally applied to be released on bond.
3. Mr Okeyo, counsel for the prosecution opposed the application for bond/ bail and stated that they have filed an affidavit on compelling reasons.
4. The prosecution filed two affidavits in objection to bond. One by CPL Nick Karani sworn on 7/7/2022 and another by Jefferson Koriko sworn on September 30, 2022. Both containing reasons they believe constitute compelling reasons not to release the accused on bond, to wit: -
 - i. Flight risk- that the accused person will abscond the court sessions having done so before and also being in the hide out after he committed the heinous crime of murdering Henry Nkoitoi Koriko. That during investigations it was established that their ancestral land was sold to Thomas Ole Meiseiyeki Land No Oloiborsoito/ 691 immediately after the incident that the accused and his brothers both disappeared to unknown places. The accused person with others who are still at large on 3rd and October 4, 2016 at Kilgoris township vide OB No 15/04/10/2016 committed an offence of murder of Samuel Kiu Kiyuoni. The accused after the commission of the offence of murdering Samuel Kiu Kiyuoni went missing until he came back and also participated in the murder of Henry Nkoitoi Koriko on June 13, 2020



and disappeared until he was traced and arrested within Nakuru county. The accused's brother Meshack Ledama Koriko was arrested on March 19, 2021 having committed the same offence and arraigned in Kilgoris High Court on March 31, 2021 where he was remanded at GK Prison Kilgoris where he later escaped from prison on July 31, 2021 and he is currently at large.

- ii. Safety and security of the accused- that the brutal murder of the deceased caused public outrage.
 - iii. Interference with witnesses- the accused person's relatives have issued threats to the deceased's father. the matter was reported to Kilgoris *vide* OB No 04/06/04/2021
5. The accused person vide replying affidavit sworn on September 30, 2022 stated that he was not at the crime scene when the incident happened. That he has never committed an offence with his brother Meshack Ledama Koriko. that he has had a good relationship with his neighbours and the community at large and no other person has reported him for breach of peace. That he is a law-abiding citizen with no intentions of threat like activities. That he has a known place of abode which is his home and he has no intentions of fleeing the jurisdiction of this court in any manner whatsoever. That he is committed to obeying orders regarding bond or bail that this court will impose against him.

ANalysis And Determination

6. Right to bail under Article 49 (1) (h) of the Constitution is only limited to the extent there is compelling reason not to release the accused on bail. Proving compelling reason under the article is the burden of the prosecution. See Muraguri v Republic [1989] KLR 181, and R V Richard David Alden (2016) eKLR.
7. To bail pending trial unless there are compelling circumstances Although the accused faces the grave charge of murder; he is still deemed innocent and is entitled under Article 49 (1) (h) of the Constitution to bail pending trial unless there are compelling circumstances. The accused is presumed innocent until the contrary is established by the court. See Article 50(2)(a) of the Constitution.
8. The overarching objective of bail is to ensure the accused gets his liberty, but also attends his trial. Muraguri v Republic [*supra*].
9. Relevant matters to be considered by the court include: the nature of the charge; the likely sentence; previous criminal records, the views of the family of the victim, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.

Applying The Test

10. Has the prosecution proved compelling reasons not to release the accused on bond?
11. From the respective parties' oral submissions and affidavit in objection to bond it is apparent that the bond application has been opposed on three main grounds namely; flight risk, safety and security of the accused and interference with witnesses.

Flight risk.

12. In his affidavit, CPL Nick Karani avers that the accused person is a flight risk; he has no known permanent place of abode and if granted bond and he absconds that it will be difficult to trace him. That when he committed this offence, he went into hiding. They also stated that he and his brother has committed several crimes and everytime they commit offences they disappear. His brother in fact escaped from prison. The IO stated that should the accused be released he is likely to abscond and tracing him, as was before, will be an uphill task.



13. There is no reason to doubt the IO as he has provided succinct details of how the accused was arrested after he had disappeared from the scene. And as long as his brother as well as other accomplices are at large, despite the averment by the accused that he will attend court when required, there is no guarantee he will attend the trial. I so find.
14. The purpose of bail is to ensure the accused person's attendance during trial. It has been stated now and again that mere allegations or strong suspicion does not meet the threshold, the reasons must be compelling. The prosecution has established attempts to defeat his arrest or to escape. For these reasons, the ground is substantiated. I accept it.

Safety and Security of Accused

15. Regarding the claim that if granted bond the safety and security of the accused might be in jeopardy, this claim does not appear to be well founded for the following reasons; an accused person is presumed innocent until proved guilty. Bitterness by members of the deceased's family or public though natural cannot be a basis for denying an accused person his constitutional right to bond pending trial. My view is that, the ground that the security of the accused is threatened by the members of the public or victim family, should never be encouraged to be a ground for denial of bail; otherwise, courts will inadvertently promote or condone violence, disorder and usurping of law by individuals or group of people.
16. In any case, it is the duty of the state to ensure safety and security of its citizens including the accused person. The police should take appropriate measures to ensure security of the accused person. I therefore find the argument that the accused be detained for her own safety and security to be without any legal or factual basis and I reject it.

Interference with witnesses.

17. The prosecution alleges likelihood of interference with prosecution witnesses. On this ground the court in *R V Jaktan Mayende & 3 others*, stated that:

“ - In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general as envisioned by the people of Kenya in the Preamble to the Constitution of Kenya 2010.....Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give schewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”

18. See also *R V Patius Gichobi* where the court held that proven interference with witnesses was an affront to the administration of justice and therefore a compelling reason contemplated by Article 49 (i) (h) of the Constitution. Accordingly, the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond. More jurisprudence on the point is found in *R V Dwight Sagaray & 4 others*, 2013 eKLR, where the court stated that: -

“For the prosecution to succeed in persuading the court on these criteria, it must place material before the court which demonstrate actual or perceived interference. It must



show the court for example the existence of a threat or threats to witnesses; direct or indirect, incriminating communication between the accused and witnesses; close familiar relationship between the accused and witnesses among others.”

19. As the law stands, it is the duty of the court to give effect to the rights of victims expressed in Section 10 of the *Victim Protection Act* No 17 of 2014, as follows: -

10 (1) a victim has a right to: -

- (a) Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- (b) Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- (c) Have their property protected.

20. Interference with witnesses has another facet. It undermines the criminal justice system and dents the integrity of the criminal process. This would in turn interfere with the administration of justice or prejudice the trial. It is the duty of the court to preserve the integrity of the trial. In this regard, I am persuaded by the reasoning of Lesiit J in *R V Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No 57 of 2016 (2016) eKLR where she succinctly stated that: -

“Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger and individual or individuals or the public at large; likelihood the accused may commit other offences. In this instance where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail term; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention.”

21. In the present case the prosecution stated in their affidavits that the accused is likely to interfere with key witness. that the accused has used his proxies and agents to threaten and intimidate the family of the victims and witnesses. The father of the victim reported the threats vide Kilgoris Police Station OB No June 4, 2021. Accordingly, the prosecution has proved threats to or possibility of interference with witnesses.

22. I find there is cogent material before court to demonstrate actual or perceived interference with witnesses by the accused if released. The stringent standard set by the *Constitution* has been met as to justify limitation of fundamental freedom or liberty of the accused.

23. In the final analysis, I find there is a compelling reason not to grant the accused bail. In the interest of justice hearing of this matter shall be expedited. The hearing date shall be fixed on priority basis.

24. It is so ordered.

DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 1ST DAY OF FEBRUARY, 2023.

F. Gikonyo M.

Judge

In the presence of:

1. Mr. Okeyo for



2. Ms. Pias holding brief for Wekesa for accused

3. Mr. Kasaso - CA

