



REPUBLIC OF KENYA



**Odada v Republic (Criminal Case E058 of 2022)  
[2023] KEHC 1793 (KLR) (Crim) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E058 OF 2022  
JM BWONWONG'A, J  
MARCH 1, 2023**

**BETWEEN**

**EDWIN ONDITI ODADA ..... ACCUSED**

**AND**

**REPUBLIC ..... PROSECUTION**

*(Being an application for bail pending trial)*

**RULING**

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 (*cap 63*) Laws of Kenya. The particulars of the offence are that on July 11, 2022 at Umoja III estate within Dandora area of Nairobi County the accused murdered Pamela Aluoch.  
The accused pleaded not guilty.
2. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. His application is supported by an affidavit dated October 17, 2022 sworn by his advocate, Mr. Gachoka Mwangi. It is grounded on the following averments. That the accused will not abscond if released on reasonable bail/bond terms. He undertakes to live in Kayole in the house of his elder brother, Oluoch Odada, who will also serve as his surety. That his mother Risper Odada can also be contacted if there is a need to trace him. He is ready and willing to offer reasonable security as a condition to be released on bail/bond. Further, he has no intention of interfering with any witness who intends to testify against him.
4. No. 81548 CPL Judith Muthoni of DCI Dandora filed an affidavit to oppose bond. The averments made were that the accused stayed with the deceased's boyfriend. That he was evicted from the premises



on allegations of rape. Some of the witnesses in the case against him are his sister-in-law, a former employer and his colleagues who are all well known to the accused. They are apprehensive that should he be released on bail/bond, he will intimidate them or otherwise interfere with the case. In addition, the accused has no known place of fixed abode. This demonstrates that he is a flight risk. She urged the court to deny the accused bail/bond until the pending the hearing and determination of the case against him.

The submissions of the parties

The parties did not file any written submissions.

### **Issues for determination**

5. Having considered the application, the response thereto and the applicable law, I find that the issue for determination is whether there are compelling reasons to deny the accused bail/bond.

### **Analysis and determination**

6. Article 49 (1) (h) of the Constitution of Kenya guarantees the right of an arrested person to be released on bond/bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (cap 75) Laws of Kenya.
7. The right for an accused person to be released on bail is not absolute.
8. In determining whether the interest of justice dictate the exercise of discretion under article 49 (h) of the Constitution Kenya, the court is to be guided by the provisions of section 123A of the Criminal Procedure Code (cap 75) Laws of Kenya which provides that:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

- (a) Nature or seriousness of the offence;
  - (b) The character, antecedents, associations, and community of the accused person;
  - (c) The defendants record in respect of the fulfillment of obligations under previous grant of bail;
  - (d) The strength of the evidence of his having committed the offence:
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;
    - (a) Has previously been granted bail and has failed to surrender to custody if released on bail, it is likely that he would fail to surrender to custody;
    - (b) Should be kept in custody for his own good.
9. The constitution specifically requires under article 49 (h) that the terms of bail to be attached to an accused, who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code and article 49 (h) of the Constitution places the



burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons as to why the accused should not be released on bail.

10. In opposition to the application for bail/bond, the investigating officer CPL Judith Muthoni averred that there was a likelihood that the accused will interfere with the witnesses if released. She also averred that the witnesses are well known to him and there was reasonable apprehension of coercion, intimidation and interference. On his part the accused undertook to abide by the conditions set by the court for his release. He also undertook not to interfere with any prosecution witnesses.
11. From the record, no evidence was produced to support the allegation of interference with the prosecution witnesses. In the absence of such evidence, his averment that there is a likelihood that the accused is likely to interfere with the witnesses is speculative in nature and is inadmissible. I therefore reject his averment for that very reason.
12. The investigating officer also claimed that the accused did not have a fixed abode and was therefore a flight risk. On his part, counsel for the accused averred that he would be living in Kayole with his elder brother who will also serve as his surety. He also stated the contact point will be his mother. Similarly, in the absence of evidence that the accused is a flight risk, I reject the averment by the prosecution which alleges that the accused is a flight risk
13. After taking all the foregoing matters into account, I find on the evidence and the applicable law that there are no compelling reasons to deny bail/bond to the accused.
14. In the premises, the application of the accused succeeds and is hereby granted bail in the sum of Kshs. 300,000/- with a surety of a similar amount to be approved by the Deputy Registrar of this court.
15. In the alternative, the accused may be released on cash bail of Shs. 150,000/-
16. In the interim period the accused will be remanded in custody until he complies with the terms of his release on bail/bond.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS 1<sup>ST</sup> DAY OF MARCH 2023.**

**J M BWONWONG'A**

**JUDGE**

In the presence of: -

Mr. Kinyua: Court Assistant

Mr. Gachoka Mwangi for the applicant

Ms Peris Maina for the respondent

