



**Wambui v Republic (Criminal Case E029 of 2021)  
[2023] KEHC 1555 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1555 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E029 OF 2021**

**J WAKIAGA, J**

**MARCH 2, 2023**

**BETWEEN**

**CAROLINE WANJURU WAMBUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant faces a charge of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of which are that on 21<sup>st</sup> day of September 2021 at Rubiru Village Gituamba Sub-Location, Kakuzi Location within Muranga County Murdered Calvin Munge Muchiri.
2. She pleaded not guilty to the charges before me on November 2, 2021 upon which the Court fixed the application for bond on December 6, 2021 with leave to file further affidavit.
3. Of note for the purpose of this Ruling, is that the on October 27, 2021 the Applicant filed a Notice of Motion in Court. She sought to be admitted to bond/bail pending the taking of plea on the period that she was unwell having fallen sick during custody/remand and had been breastfeeding a child aged fifteen months now living with the grandmother, so both the child and the Applicant were suffering from lactation issues.
4. The Application was supported by her affidavit in which she deposed that she was arrested on September 22, 2021 at Dandora Nairobi and brought to Kirwara Police Station where she was detained upto September 24, 2021 before being produced to Court at Kandara PM's Court and has since been in custody.
5. While that application was still pending, on December 17, 2021 the Applicant under a certificate of urgency applied for bail on reasonable terms pending hearing, which application was supported by an affidavit sworn by the same in which she deposed that she was a mother of two minors who was at the



- time of her arrest employed by Cerebral Palsy Society of Kenya and her husband operating as a business man at Korogocho Market in Nairobi.
6. It was deposed that she had taken 41 days in the police custody before appearing in Court during which period of time she suffered psychological torture and mental anguish and that when the application was fixed for hearing on 6<sup>th</sup> of December, the Court was not sitting with the application being fixed for January 18, 2022 adding to a total number of days the Applicant had been in custody to 117, which undue delay can only be attributed to the failure of the criminal justice system.
  7. It was deposed that she was willing to present herself to Court if and when called upon.
  8. In opposing the release of the Applicant on bond, the state through PC Lelis Isama filed an affidavit in which it was deposed that since the motive for the offence was not known, that posed a great danger to the victim's family and further that the witnesses were known to the accused being family members leading to a likelihood of interference and intimidation, as confirmed by the fact that the accused had contacted the mother of the deceased while she is in custody, requesting her to step back .
  9. It was contended that the manner and style in which the offence was committed, was well organised and dangerous and since the accused belongs to God Set Me Free Church, where most of the witnesses come from, there is likelihood of spiritual interference.
  10. On the 11<sup>th</sup> of February 2022 the Applicant filed another application under certificate of urgency, which application was fixed for hearing on April 6, 2022 when the Court was not sitting and the matter fixed for hearing on May 31, 2022, when the Court heard and recorded the evidence of two prosecution witnesses before proceeding for annual leave.
  11. I have taken the liberty of setting out the brief history of this matter, since while these applications and the cause were pending for hearing an organisation calling itself Public Corruption And Governance Watch(PCEG) caused three (3) letters to be written allegedly to the UN Security Council, the President William Ruto, Martha K Koome The CJ, Mr Noordin Haji DPP, Mr Amin Mohamed Ibrahim DCI, Presiding Judge Murang'a High Court and Raila Amolo Odinga in which he alleged of high Court barbarity, conniving and connivance to put Ruto administration to a level of former Uganda President Idi Amin, whatever that means. He threatened to take legal action against the Court for what he calls (because we cannot allow bribery to safe those who killed Calvin Munge).
  12. To second letter was attached five witness statements: by the accused, James Kamande Ngige, Philis Njambi, John Mwangi Muiruri and James Kariuki Mwangi but without indicating the sources and the relevance of the same to the content of the letter, which from a literal reading thereof seems to be accusing the Court of engaging in corrupt practises with the aim of denying the accused her constitutional right to fair trial by illegally detaining her.
  13. It must be stated for record purposes that the trials are conducted in Court through evidence tendered and not through some unfounded allegations contained in letters addressed to the whole world. These kind of letters not only amount to interference with the course of justice but are also an abuse of the Court processes for which unless the same provides evidence to substantiate his allegation, must be held accountable, together with the accused on whose behalf he is acting as contempt on the face of the Court.
  14. On the merit of the application, the state having raised the issue of the close relationship between the accused and the intended witnesses, I directed that those witnesses testify first and have their evidence secured before the application is heard and determined and for record purposes PW1 Simon Muchiri Kanyi, the father of the deceased and a brother in law to the Applicant , PW2 Julius Mugo Gathambo,



her husband and PW3 Wilson Gathongo Mwangi, her father in law and the acting Bishop of the Church have since testified.

15. The Court further ordered for pre-bail report which was duly filed dated December 2, 2021 in which it was stated that the Applicant was at the time of the alleged offence employed by the Cerebral Palsy Society of Kenya in Donholm Nairobi. Her husband sells farm produces at Korogocho market in Nairobi and living with their two minor children. Her grandmother and uncle were supportive of her application, while the victim's parents were against her being released on bond on account of the fact that her church which was holding the event at which the deceased was killed engages in questionable faith and believe that the child was sacrificed, hence the likelihood of them coming for their remaining children.
16. On the community view, it was stated that since the incidence happened elsewhere they were not hostile to the accused being released on bond.

### **Determination**

17. Bond is a constitutional right of every accused person under Article 49 which can only be limited where there are compelling reasons advanced by the prosecution on a balance of probability. In this cause the only compelling reasons advanced by the state is the likelihood of the accused interfering with witnesses and the accused or her church harming the victim's siblings as they believe he was a victim of human sacrifices.
18. As stated herein, the evidence of the witnesses which the accused is likely to interfere with have since testified safe for her sister the mother of the victim and as stated in the pre-bail report, the fear of the accused church being engaged in human sacrifice has not been scientifically proved, to enable the Court rely on it to deny the accused bond.
19. I therefore find and hold that there is now no compelling reason to enable the Court deny the accused her right to bail as the remaining reasons can be ring fenced through appropriate bond terms and conditions.
20. The Accused shall therefore be admitted to bond/bail on the following terms and conditions:
  - a) Bond of Kenya shillings five hundred thousand (Kshs 500,000) with one surety of similar amount.
  - b) In the alternative cash bail of Kenya shillings two hundred and fifty thousand (Kshs 250,000) with one surety of similar amount.
  - c) During the period of trial, the Accused shall not make any contact with the remaining prosecution witnesses including her sister the mother of the deceased unless the same is done in the presence of the Investigating Officer.
  - d) Having noted that the accused lives in Nairobi, outside the jurisdiction of this Court, the same shall appear for mention before the Investigating Officer once after every ninety (90) days until final determination of the cause.
  - e) In view of the content of the letter by Charles Ndungu Mwangi, whom I believe unless otherwise proved, was acting on behalf of the accused person, the same is hereby bonded, on his personal bond to be executed before the Deputy Registrar of the Court, to be attending all the proceedings herein until the final determination of the cause.



- f) The same is further directed to record a statement with the DCI Murang'a within the next seven (7) days from the date of this Ruling, who is hereby directed to take action on the allegations contained in the said letter and if found to be false to commence appropriate proceedings against the said Charles Ndungu Mwangi and file a report in this file within the next thirty (30) days.

21. And it is ordered.

**SIGNED DATED AND DELIVERED AT MURANGA THIS 2<sup>nd</sup> DAY OF MARCH 2023**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

**Quinteen James - Court Assistant**

**Mr. Mugu Advocate for the Accused**

**Ms Muriu Prosecutor**

