



REPUBLIC OF KENYA



**Republic v Songwa (Criminal Case E006 of 2023)
[2023] KEHC 17564 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E006 OF 2023**

PM MULWA, J

MAY 22, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

MARK WAMALWA SONGWA ACCUSED

RULING

1. The Accused herein Mark Wamalwa Songwa is charged with the offence of murder contrary to section 203 as read together with section 204 of the [Penal Code](#). The particulars of the information dated February 23, 2023 states that on the night of 27th – January 28, 2023 at Limuru Town, Limuru Sub-County within Kiambu County, he murdered Peterson Wanjala Songwa.
2. According to the court records the accused was mentally examined on February 7, 2023 and found fit to plead and stand trial.
3. On February 28, 2023 the accused took a plea, denied the charge and a plea of not guilty was entered. His counsel Mr. Mwangi prayed that he be released on reasonable bail terms.
4. Mr. Gacharia, the state counsel informed the court that he did not have compelling reasons to oppose the release of the accused person on reasonable bail terms but urged the court to call for a pre-bail report.
5. A pre-bail report was filed on March 29, 2023. The report states the family of the accused is willing to mobilize resources and pose bail for the accused and ensure he attends court whenever required. The deceased was his son sired by the second wife. The mother of the deceased is still in fear and hurting due to the loss of her son. His employer describes the accused as a hard-working person when undertaking his tasks, though he states the accused had terminated his services during the December holiday. He was not opposed to the accused being granted bail.



6. According to the Probation Officer, the report is favourable.
7. 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.
8. The right to bail is not absolute and may be denied if they are compelling reasons established by the prosecution.
9. In this case the prosecution admitted it had no compelling reasons to oppose bail. The family of the accused is willing to ensure the accused complies with the set conditions and attends court.
10. The Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 sets out judicial policy on bail as follows: -
The following procedures should apply to the bail hearing: -
 - 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. The pre-bail report states that prior to the accused being arrested on this offence he had no criminal record. The sister of the accused is willing to ensure the accused attends court if admitted to bail and the family, though not in a position to raise cash bail will mobilize resources.
12. Accordingly, in the absence of any compelling reasons, I allow the application for the release of the accused on bail pending trial.
13. The accused may be released on a bond of Kshs. 500,000/= with one surety of a similar amount. The accused shall not interfere with witnesses.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 22ND DAY OF MAY, 2023.

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P.M. MULWA

JUDGE

In the presence of:

Kinyua/Duale – Court Assistants

Accused - Absent

Mr. Muriuki - for State



Mr. Mwangi - for Accused

