



**Republic v Wotuni (Criminal Case E013 of 2022)  
[2023] KEHC 18077 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE E013 OF 2022**

**F GIKONYO, J  
MAY 18, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TITUS MARIPET WOTUNI ..... ACCUSED**

**RULING**

**Bond/Bail Application**

1. The prosecution opposed release of the accused person herein on bail. The accused is facing a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. According to the three affidavits filed by the prosecution- sworn by Sinante Kerembe, CPL Eric Munene and Koyata Ole Mariko on October 13, 2022, the following are compelling reasons not to release the accused on bond, to wit: -
  - i. Witness interference -that the mother of the deceased and the accused are cousins and therefore the accused is likely to interfere with the said witness. The key witnesses reside with the accused in the same village.
  - ii. Safety and security of the accused- - that the villagers and friends of the deceased are agitated by the act and they will seek revenge once the accused is released on bond.
3. The accused filed a replying affidavit sworn on November 14, 2022. He averred that the averments in opposition to grant of bail are not corroborated by a probation report and that he was not accorded an opportunity to cross-examine the said deponents. That the allegation of witnesses interference are not substantiated. That his life is not at risk and if he will be required to change his residence he will inform his surety. He therefore prays for lenient bond terms as the offence is bailable.



## Analysis and Determination

### Right to bail

4. All persons charged with a criminal offence are entitled to be released on bond on reasonable conditions except where there are compelling reason not to be so released (art. 49(1)(h) of *the Constitution of Kenya, 2010*). This is on the premise of the right to be presumed innocent until the contrary is proven (*R v Richard David Alden* (2016) eKLR.)

### Compelling reason and burden of proof

5. The prosecution bears the onus of proving compelling reasons under article 49(1)(h) of *the Constitution*- these are reasons that justify the limitation of the right to liberty in the context of article 24 of *the Constitution*.

### Objective of bail

6. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial (*Muraguri v Republic*).

### Grounds for objecting bond

7. The prosecution cited two grounds on which they opposed bail; i) safety and security of the accused persons; and ii) witness interference.
8. I will take each in time.

### Safety and security of the accused person.

9. The village elder in his affidavit stated that the villagers are agitated by the act and might seek revenge once the accused is released on bond.
10. The defense has stated that the accused will change residence if his life will be in danger and inform the surety.

### Taking the law into own hands

11. It is my strong view that the ground that the accused person is likely to be attacked and get injured if released on bond should never be encouraged to be a ground for denial of bail; lest it should inadvertently promote or condone violence, disorder, and usurping of law by individuals or group of people. Nevertheless, it may not be appropriate to test the waters with the life of the accused especially where the victim is a member of their own family. In such case, it may be imprudent to release him to go back to the same family he injured.

### Interference with witnesses

12. A more potent ground, if proved, is the prosecution's allegation of likelihood of interference with prosecution witnesses as such amounts to an affront to the administration of justice, thus, justifiable reason to limit right to liberty (*R v Patius Gichobi*, article 24 of *the Constitution*)



13. See also a work of court in *R v Jaktan Mayende & 3 others*, 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 skewed 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.”

14. 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 (*R v Dwight Sagaray & 4 others*, 2013 eKLR)

15. The prosecution claims that some of the witnesses are close relatives of the accused and are likely to be interfered with by the accused. The witnesses have been listed as mother of the deceased who is a cousin to the accused and the village elder who is also a cousin to the accused.

16. These are victims of the crime whose rights the court is obligated to uphold and protect. These rights are stated in Section 10 of the *Victim Protection Act* No. 17 of 2014 that: -

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(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.

17. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of his family who are witnesses against him, makes such witnesses vulnerable to harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused person. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions.

18. It is therefore, appropriate that these victims should be free from harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons; a right under section 10 of the Victims Protection Act. It is not also lost to the court that the safety of victims is to be taken into account in determining bond issues.

19. Consequently, I find that the prosecution has proved that the accused is likely to interfere with witnesses herein.

20. In light thereof, emphasis is on the court's duty to ensure that the integrity of the trial is not prejudiced by unlawful acts of the accused such as interference with witnesses. Integrity of the trial guarantees fair



trial (*R v Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No. 57 of 2016 (2016) eKLR and *K K K v Republic* [2017] eKLR)

### **Conclusion and Orders**

21. In conclusion, I find there are compelling reasons not to release the accused person on bail. He will remain in custody during the hearing of the case. In light thereof, I direct the hearing of the case to be fast-tracked.
22. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 18<sup>TH</sup> DAY OF MAY, 2023.**

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**F. Gikonyo M.**

**Judge**

**In the Presence of:**

1. Accused
2. Langat for accused
3. Ms. Peninah for the Respondent
4. Kasaso - CA

