



REPUBLIC OF KENYA



**Republic v Gicharu & 2 others (Criminal Case E009 of 2022)
[2023] KEHC 17709 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17709 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E009 OF 2022**

J WAKIAGA, J

MAY 17, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON GICHARU 1ST ACCUSED

WILLIAM KUKHALE 2ND ACCUSED

GEORGE KIMANI NGIGE 3RD ACCUSED

RULING

1. The accused persons are charged with the offence of murder Contrary to Section 203 as read with Section 204 of the *Penal Code* to which they pleaded not guilty.
2. In compliance with the provisions of Article 49 of the *Constitution* the Court invited the prosecution to offer any compelling reasons for the accused persons to be denied their constitutional right to bond/bail. In response to which the Learned Public Prosecutor Ms Otieno indicated that they had compelling reasons on the 2nd accused person but did not have any compelling reason to offer on the 1st and 2nd accused.
3. In compliance with the Judiciary *Bail and Bond Policy Guidelines*, the Court called for pre bail report on the accused persons and on the 1st accused it was stated that the same was a hardworking person who was engaged in casual labour despite his mild mental retardation. On the victim impact statement, it was indicated that the death of the deceased had caused pain and suffering to his father who had as a result developed high blood pressure but did not oppose the release of the 1st accused who was well known in the village.
4. The community stated that he was well known in the area without previous record and there was no community bitterness towards him, they did not oppose his release on bond, though one intended



- witness stated that he would not feel safe should he be released since he had been assaulted together with the deceased. It was stated that the only person who had close ties with the accused was his married sister and was not a threat to the community.
5. On the second accused it was stated that the same once lived in Kapenguria before moving to Kitale where his father was working as a watchman and later on to Lodwar. The accused later on moved to Muranga where he was employed as a farm hand as at the time of the incidence. He was married with two children but was separated to his wife leaving his children under the care of his mother. He has no previous criminal record. On the victim impact it was stated that his mother had passed away in the year 2008 and his father had developed depression as a result of his death. They were of the view that if released on bond, the accused might disappear since he comes from Turkana.
 6. On the community view, it was contended that occurrence was still fresh and that the security of the accused could not be guaranteed and that the accused link to the area had since left and therefore the same should remain in custody.
 7. For the 3rd Accused it was stated that the same was a second born in a family of four. His mother stated that around 2016 he was arrested, charged, convicted and sentenced to six (6) months on a charge of arson wherein she was the complainant. The Area Administrator stated that he was well known to them and some members of the community stated that he had on several occasions been suspected of stealing and other mischiefs within the community. They were therefore apposed to his release on bond.
 8. It was stated that whereas the Accused pleaded for lenient bond terms, the community was apprehensive about his release and the father of the victim states that though they were neighbours, who had co-existed peacefully, he was still grieving the death of his son and did not consider the accused as a threat to him.
 9. Bail is a constitutional right of every accused person which may only be denied if there are compelling reasons advanced by the prosecution on a balance of probability and as per the bond policy guideline every accused person under article 50 (2) of the Constitution shall be presumed innocent and therefore pre-trial detention should not constitute punishment.
 10. In this matter the prosecution did not offer any compelling reason against any of the accused persons and the only reasons advance against the 2nd accused through the Pre-bail report is that the same does not come from the areas and being that his parents live in Turkana County he is likely to disappear. I find this very unfortunate since Turkana County forms part of this Country and the residence of the said County have equal protection of the Constitution just like those from what might in the eye of the probation officer be considered to be from civilised County like Muranga.
 11. There is no evidence tendered by the prosecution to show that the 2nd accused is a flight risk and that the fear on the part of the victim's family cannot be ring fenced by appropriate bail and bond terms as the only purpose for bond remains to ensure that the accused attend to his trial.
 12. At the hearing herein, Ms Muriu for the State did not oppose the release of the 1st and 3rd Accused on bond since the probation report was favourable to them. She opposed the release of the 2nd Accused and submitted that the same was a flight risk based on the pre-bail report. Ms Waititu for the 1st and 2nd Accused submitted that the victim family were not opposed to their release and that the 2nd accused did not come from the same village with the victim and was willing to relocate to Kitale if so released.



13. Ms Githinji for the 3rd Accused submitted that he had lived peacefully with his neighbours while operating as a boda boda rider in Gatanga and was in need of medical attention having been assaulted during his arrest.
14. I therefore find and hold that the prosecution failed to establish any compelling reasons to enable the Court deny the 2nd accused the enjoyment of his constitutional right under Article 49(1) (h) of the Constitution and those stated in the pre-bail report can be adequately protected by appropriate bond term.
15. Both accused persons shall therefore be released on the following bond terms:
 - a. Bond of Kenya shillings Five Hundred Thousand (Kshs 500,000) with one surety of a similar amount for each of the accused person.
 - b. In the alternative for the 1st and 3rd accused cash bail of Kenya Shillings one Hundred Thousand (Kshs 100,000) together with one surety of similar amount and for the 2nd accused Two Hundred Thousand (Kshs 200,000) with one surety of similar amount.
 - c. Upon release of the 2nd accused the same shall report to his local Assistant Chief immediately and shall be reporting to the same once every last Thursday of the month and shall so report until the final determination of this cause and the said Assistant Chief shall file a report thereon to the Deputy Register of this Court at the beginning of each subsequent month.
 - d. In default of any of the terms herein the bond shall stand cancelled without any further Court order.

DATED SIGNED AND DELIVERED AT MURANGA THIS 17th DAY OF MAY 2023.

J. WAKIAGA

JUDGE

In the presence of:

Ms Gakuu for the state

Mr Mwaura for 1st & 2nd Accused

Mr Mwaura for Ms Githinji for 3rd Accused

Jackline – Court Assistant

