



**Republic v Masikonde (Criminal Case E020 of 2022)
[2023] KEHC 17596 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E020 OF 2022
F GIKONYO, J
MAY 17, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT LEPARAKUO MASIKONDE ACCUSED

RULING

Bond/Bail Application

1. The accused person herein is facing a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. He applied on December 19, 2022, through his defense counsel to be released on bond/bail on reasonable and fair terms.
3. Ms Torosi stated that they have information that the accused is threatening witnesses. That the I O will file affidavit stating compelling reasons.
4. Ms Moraa orally submitted in court that, they deny allegation of witness interference. She argued that the accused reported the case himself. That the allegations are unfounded. She urged the court to take no consideration of them.
5. The prosecution filed an affidavit to oppose the bond, sworn on January 19, 2023 by PC Martin Mutwiri. The deponent stated reasons they believe constitute compelling reasons not to release the accused on bond, to wit: -
 - i. Witness interference -that on November 16, 2022, the SCCIO Narok central received a petition from the larger family of Masikonde and their neighbours citing fears that they might face when the accused person is committed to bail or bond as he has threatened to kill Sivia Sempeyo (sister in law), Joseph Masikonde, Peter Masikonde (both are his cousins) and his



father Koileken Ole Masikonde. Therefore, if freed might expose some family members to danger.

- ii. Flight risk- the accused person after committing the offence ran away and later surrendered himself at Elburgon police station.
 - iii. Safety and security of the accused- - that the accused person if released on bond may expose some family members and himself to danger as members of the public are bitter with the act of killing he committed.
6. The accused did file two affidavits. One by John Oloishorua Ole Masikonde filed in court on 16/03/2023 and another by the accused sworn on March 2, 2023.
 7. John Oloishorua Ole Masikonde averred that his father is elderly and was incapable of authoring the petition. That there was never any such meeting to approve the petition. That most of his family members and neighbours were faced by fear during the period of grieving and signed the petition
 8. The accused averred that he intends to remain a law abiding citizen and to distance himself from the witnesses and family of the victim that he will reside in Kajiado with his brother.

Analysis And Determination

Right to bail

9. 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 vs Richard David Alden* (2016) eKLR.)

Compelling reason and burden of proof

10. The law places the onus of proving compelling reasons upon the prosecution- these are reasons that justify the limitation of the right to liberty in the context of article 24 of the *Constitution*.

Objective of bail

11. 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

12. The prosecution cited three grounds on which they opposed bail; i) likelihood of absconding or flight-risk; ii) safety and security of the accused persons; and iii) witness interference.
13. I will take each in time.

Flight risk.

14. In his affidavit, PC Martin Mutwiri averred that the accused person ran away after committing the crime but later reported himself at Elburgon Police Station.
15. The accused person has not responded to this allegation.



16. Nevertheless, it is the onus of the prosecution to show that the accused is likely to abscond if released on bond.
17. Merely stating that an accused person ran away from the scene but later surrendered himself to the authorities is not a compelling reason except with cogent evidence. The statement by the prosecution was of a general nature and was not supported by the necessary details that would make the court hold that the accused is likely to abscond. The claim is neither here nor there, and is devoid of any supporting evidence. I reject it.

Safety and security of the accused person.

18. The investigating officer in his affidavit stated that the accused might expose his family members and himself to danger as members of the public are bitter with the act of killing he committed.
19. From the pre- bail report, the area assistant chief stated that the home environment is hostile and for the accused own security he should remain in custody.
20. The defense has not responded to this ground.

Taking the law into own hands

21. Although it is my strong view that the ground that the accused persons are 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; 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

22. A more potent ground, if proved, is the prosecution's allegation of likelihood of interference with prosecution witnesses. See *R. vs. Patius Gichobi* that proven interference with witnesses was an affront to the administration of justice and therefore a compelling reason contemplated by Article 49 (i) (h) of the *Constitution*.
23. See also a work of court in *R vs 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 schewed 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.”

24. 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 vs Dwight Sagaray & 4 others*, 2013 eKLR)



25. 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 sister in law, cousins of the accused and the father of the accused.
26. These are victims of the crime which bring to the fore the duty of the court to uphold the rights of victims.
27. According to Section 10 of the [Victim Protection Act](#) No. 17 of 2014: -
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- 1 a victim has a right to: -
- Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- Have their property protected.
28. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of the family who are witnesses against them, make them vulnerable to harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions.
29. 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.
30. Consequently, I find that the prosecution has proved that the accused are likely to interfere with witnesses herein.
31. In light thereof, the court must ensure that the integrity of the trial is not prejudiced by acts of interference with witnesses by the accused persons. Integrity of the trial guarantees fair trial ([R. vs. Fredrick Ole Leliman & 4 Others](#), Nairobi Criminal Case No. 57 of 2016 (2016) eKLR and [K K K vs. Republic](#) [2017] eKLR)

Conclusion and Orders

32. 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.
33. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 17TH DAY OF MAY, 2023

F GIKONYO M.

JUDGE

In the Presence of:

1. Ms. Moraa for accused
2. Mr. Kasaso- CA



3. Ms. Mwaniki for DPP

