



**Republic v Langat (Criminal Case E013 of 2022)  
[2023] KEHC 4112 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4112 (KLR)

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

**F GIKONYO, J  
MAY 10, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NICHOLAS KIPRONO LANGAT ALIAS EZRA ..... ACCUSED**

**RULING**

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 7, 2022, through his defense counsel to be released on bond.
3. The prosecution opposed release of the accused on bond or bail on the basis of the reasons contained in the affidavit sworn by PC John Cheruiyot on January 20, 2023. The prosecution cited two reasons, to wit:
  - i. A flight risk- the accused fled the scene after commission of the crime and sought refuge at Keringet in Nakuru county for a period of four months. That he has no fixed abode.
  - ii. Likelihood of interference with Witness -some of the key witnesses in the case are close relatives i e his close own auntie namely Daisy Chepkirui Rotich who is the wife of the deceased and who lives in the same compound with the accused- murder suspect of her husband.
4. The accused person filed a replying affidavit sworn on March 3, 2023 in support of the application for bond.
5. According to the accused, the reasons stated by the prosecution are not compelling reasons not to release the accused on bond, because:



- i. The Accused is not a flight risk as he has a fixed place of abode at Morgor location where he was staying with his mother and other siblings. That he has no intention of leaving his village. That he did not run away after the occurrence of the incident but by then he was staying with his sister at Keringet in Nakuru county. That during his stay the deceased was alive but died 6 months later hence he did not leave his home with intention of hiding.
  - ii. That the prosecution has not proven and shown how he will interfere with the case or witnesses despite the fact that they are related. That the prosecution has not shown actual attempts of interference or any indication that he interfered or attempted to interfere with witnesses.
6. The accused person argued that the offence of murder is bailable under article 49(1)(h) of the Constitution. That he shall abide by any conditions that shall be set by the court. That he has no previous criminal records. That he has a constitutional right to be presumed innocent until proven guilty.

### **Analysis And Determination**

#### Right to bail

7. All persons charged with a criminal offence are entitled to be released on bond on reasonable conditions except where there are compelling reasons 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**

8. 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**

9. 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).

#### **Potency of Grounds for objecting bond**

10. The prosecution cited two main grounds on which they opposed bail; i) likelihood of absconding or flight-risk; and ii) witness interference.
11. I will take each in time.

#### **Flight risk.**

12. In his affidavit, PC John Cheruiyot averred that the accused person fled the scene of crime after commission of the offence.
13. The accused person stated that he did not run away but by the time of the incident he was staying with his sister at Keringet.
14. In this case, the accused moved out of Transmara East and was only arrested 4 months later in Keringet. The accused has not given a satisfactory explanation for his leaving what appears to be his place of residence. A viable conclusion is that he was hiding from the law; arrest and prosecution. This court is persuaded so, and finds, that there is a likelihood for him to abscond if released on bond.



## Interference with witnesses

15. The prosecution also alleged that the accused is likely to interfere with the prosecution witnesses.
16. Proof of actual or attempted, or direct or indirect interference of witnesses must be provided (see [Republic vs Margaret Kemunto & Another](#) HCCR 84/2019, and [Republic vs Sarah Wairimu Kamotho](#) HCCR 60/2019. Also, [Republic vs Paul Ndolo Kasyoka](#), HCCR 49/2019, [R vs Dwight Sagaray & 4 others](#), 2013 eKLR.)
17. 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.”
18. The prosecution claims that some of the witnesses are close relatives of the accused and are likely to be interfered with by the accused. One witness has been listed as an aunt to the accused person and also the wife of the deceased. it is alleged that she and the accused lives in the same compound.
19. These are victims of the crime and enjoy protection and rights under the law; Section 10 of the [Victim Protection Act](#) No 17 of 2014 provides inter alia: -
  - 10 (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.
20. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of the family who are witnesses against him, exposes such witnesses and make them 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.
21. 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.
22. Consequently, I find that the prosecution has proved that the accused is likely to interfere with witnesses herein.



23. I note that accused stated that the prosecution has not proved the allegation of interference of witnesses. The court takes the view that interference can occur at any stage of the matter and could be done overtly or covertly or remotely especially in this age of wireless technology.
24. In light thereof, there is need to ensure the integrity of the trial is not prejudiced by acts of interference with witnesses by the accused person. 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**

25. In conclusion, I find the accused may abscond, and interfere with witnesses if released on bond. These acts will compromise the integrity of the trial, and administration of criminal justice. These are compelling reasons not to release the accused person on bail. I reject his request for 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.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS  
ONLINE APPLICATION THIS 10<sup>TH</sup> DAY OF MAY, 2023**

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**F GIKONYO M**

**JUDGE**

**In the Presence of:**

**CA - Leken**

**Makori for Accused**

**Okeyo for DPP**

