



**Republic v Rotich (Criminal Case E009 of 2022)
[2023] KEHC 4133 (KLR) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E009 OF 2022**

**F GIKONYO, J
MAY 9, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL KIPLANGAT ROTICH ACCUSED

RULING

Bail

1. The prosecution has opposed release of the accused on bond. They have cited two (2) reasons, namely; i) That the accused is a flight risk; and ii) in public interest.
2. The explanations given in the affidavit by the Investigating Officer, CPL Kennedy Lubare sworn on November 18, 2022 are that; a) the accused was arrested while trying to flee the scene; b) he has no fixed abode; c) crucial witnesses have not testified; d) they have enough evidence to convict the accused and fear of conviction may cause him to abscond; and e) other suspects are yet to be arrested.
3. The probation officer's report stated that the family of the deceased and the accused as well as the local administration do not consider him a flight risk. They consider the incident in which the deceased died to be unfortunate but will require some reconciliation rites to be performed between the two families. None is opposed to his release on bond.

Analysis and determination

4. The prosecution bears the burden of proving compelling reasons not to release the accused on bail or bond. Such should be reasons which justify limitation of a right in the Bill of Rights in accordance with article 24 of the Constitution- in this case, right to bail in article 49(1)(h) of the Constitution.
5. Has the prosecution proved that the accused is likely to abscond?



6. The prosecution stated that the accused was arrested whilst attempting to flee the crime scene. Other than making this statement, the prosecution did not show the accused attempted to flee the scene of crime or that such attempt is an indication that he will abscond.
7. The prosecution stated further that the accused has no fixed abode. The social inquiry by the prosecution show that the accused has a fixed place of abode at Oldonyorok Location where he resides with his family. See also the replying affidavit filed by the accused.
8. Although the prosecution stated that it is a compelling reason not to release the accused on bond until the crucial witnesses have testified and the other suspects arrested, there was really nothing tangible that was placed before the court to show likelihood of interference with witnesses.
9. I should think that the affidavit herein by the IO was casually drawn and did not even attempt to provide any substance in support of the allegations made therein.
10. As the prosecution intends derogation of a right, it must provide cogent evidence to enable the court place a limitation on the right to liberty.
11. In this case, the prosecution has failed to establish any compelling reason not to release the accused on bail or bond.
12. But, as the charge he is facing is serious- murder- I shall release the accused on a bond of Kshs. 1,000,000 with two sureties of like amount. I will, therefore, not give the option of cash bail.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS
9TH DAY OF MAY 2023**

F. Gikonyo M.

Judge

In the Presence of:

1. CA – Leken
2. Okeyo for DPP
3. Samoita h/b for Makori for Accused

