



REPUBLIC OF KENYA



**Republic v Mwenda (Criminal Case E011 of 2023)  
[2023] KEHC 18951 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E011 OF 2023**

**PM MULWA, J  
JUNE 22, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**RUTH WANGUI MWENDA ..... ACCUSED**

**RULING**

1. This is a bail application by Ruth Wangui Mwenda, the accused herein who has been charged with Murder contrary to section 203 as read together with section 204 of the *Penal Code*. The particulars of the offense as per the information of charge are that on the night of 15<sup>th</sup> – 16<sup>th</sup> day of February 2023 at Githurai 45, Githurai Sub-County within Kiambu County murdered Owen Abel Kaunda.
2. A mental assessment test was conducted on 7<sup>th</sup> March 2023 and the accused was found fit to plead. She took plea on 16<sup>th</sup> March 2023, denied the charge and a plea of not guilty was entered.
3. Mr. Muriuki for the state was opposed to the accused being released on bail/bond on the strength of an affidavit sworn by No. 83421 Cpl John Opondo on 13<sup>th</sup> March 2023.
4. In the affidavit Cpl Opondo depones that the accused is a flight risk as she has no known place of abode, and no traceable family member or relative. And further that the residents of Misingo Kisumu Ndogo within Githurai 45 are still baying for her blood.
5. Ms. Kimathi counsel for the accused prayed for her release on lenient bail and bond terms. She filed a Replying Affidavit sworn by the accused person on 18<sup>th</sup> April 2023 wherein it was deponed that the averments of the investigating officer did not meet the threshold of being classified as sufficient and compelling reasons to bar her admission to bail.



6. The accused further contented that she had 6 siblings who live in Nyandarua and who were willing to bail her out. And that she also had a cousin who resides with her family in Buruburu Estate and was in a position to offer alternative accommodation if the court so directs.
7. The court in addition to the submissions by both counsel called for a pre-bail report and the same was filed in court on 25th April 2023.
8. According to the pre-bail report the accused has lived in different places since the death of her parents. Githurai being a cosmopolitan town, she is not known much even by the local administration. The sister who lives in Nyandarua does not have a permanent residence.
9. On the other hand, the family of the deceased is still hurting and want justice to prevail. They strongly oppose the release of the accused on bond.
10. Under Article 49(1)(h) of *the Constitution*, an arrested person has a right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
11. This right can only be limited where it is shown that there exist compelling reasons not to be released, and the prosecution is duty bound to inform the court whenever there exists any compelling reasons.
12. The Bail and Bond Policy Guidelines lists the following factors to be considered when releasing an arrested person on bond/bail: -
  - a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty
  - b) The strength of the prosecution case
  - c) Character and antecedents of the accused person
  - d) The failure of the accused person to observe bail or bond terms on previous occasions is a good ground for denying bail or bond
  - e) Likelihood of interfering with witnesses
  - f) The need to protect the victim or victims of the crime from the accused person
  - g) The relationship between the accused person and potential witnesses
  - h) Child offenders
  - i) The accused person is a flight risk
  - j) Whether the accused person is gainfully employed
  - k) Public order, peace or security.
  - l) Protection of the accused person.
13. According to the investigating officer the accused is a flight risk as she has no known or fixed abode. This is confirmed by the pre-bail report.
14. One of the key considerations of the release of an accused on bail/ bond is the availability to attend the trial. The averments by the investigating officer in his affidavit have not been controverted by the accused and this court is inclined to believe the deponed assertions.



15. The conclusion is that the prosecution has demonstrated compelling reasons why the accused should not be admitted to bail/bond pending trial.

16. Accordingly, the bail application by the accused is declined. She will remain in custody during trial.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 22ND DAY OF JUNE, 2023.**

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

Kinyua – Court Assistant

Accused – Present

Mr. Muriuki - for State

Ms. Kimathi for Accused

