



REPUBLIC OF KENYA



**Republic v Ndegwa (Criminal Case E016 of 2021)
[2023] KEHC 18500 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E016 OF 2021
CM KARIUKI, J
JUNE 15, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

RICHARD NDERITU NDEGWA ACCUSED

RULING

1. The Accused is charged with the offense of Murder which he has denied and applied to be released on bond/bail pending trial.
2. However, the prosecution vehemently opposed the same application, thus prompting the directions that the same be canvassed.
3. The Investigation Officer, in an Affidavit sworn on May 22, 2023 by PC Kisoyan Jepkosgei, oppose the application on grounds
 - i. The apprehension of the possibility of witness interference by the accused.
 - ii. Accused of being a flight risk as he has no fixed abode.
 - iii. Risk of harm to the accused as the community members are still very bitter with the accused for the offense allegedly committed.
4. The court called for a (PBR) the probation officer prepared on May 22, 2023. Worth noting is the fact that;

Though the accused has fixed abode at the family farm, there are still bitter views and ranging emotions in the community on the ground, and a breach of the peace will result if the accused is released for the bond at this juncture.



The victim's family and neighbors do not want to see the accused if released on bond within the vicinity.

5. Thus, Post Bail Report (PBR) leaves the court to assess the situation and exercise discretion on the issue of the bond grant. The local Assistant Chief informed Probation Officer that the situation was unsafe for the accused to be released on bond since the emotions were still raw and high on the ground.
6. The Bail and bond policy guidelines stipulate that; decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts have faced since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offenses. According to the court's decisions, the determination of whether compelling reasons can justify the denial of bail should be made by evaluating whether or not the accused person will attend their trial.
7. In practice, the courts have made this evaluation by considering the following non-exhaustive factors: The nature of the charge or offense, The strength of the prosecution case, Character and antecedents of the accused person,) The failure of the accused person to observe bail or bond terms on, Likelihood of interfering with witnesses, The need to protect the victim or victims of the crime from the accused person, The relationship between the accused person and potential witnesses, The accused person is a flight risk, Whether an accused person is gainfully employed, Public order, peace or security Whether the release of an accused person will disturb public order or undermine public peace or security, Protection of the accused person. Whether pretrial detention is necessary to protect the accused person, among other things.
8. In View of the foregoing, the court relying on Bail Policy Principles, the court finds that some elements which may influence the rejection of the grant of bail/bond obtain in the circumstances, namely; Whether an accused person is gainfully employed, Public order, peace or security Whether the release of an accused person will disturb public order or undermine public peace or security, Protection of the accused person. Whether pretrial detention is necessary to protect the accused person, among other things. Thus, the court directs that the release of the accused on bail/bond be deferred to a future date to await the emotions to cool, and circumstances change, including the ground to be safe for an accused person to fit in. Thus, they make orders that;
 - i. The grant of bail/bond pending trial is deferred to a later date.

THEY ARE DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 15TH DAY OF JUNE 2023.

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CHARLES KARIUKI

JUDGE

