



**Republic v Farah alias Issa (Criminal Case E085 of 2022)
[2023] KEHC 18732 (KLR) (Crim) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E085 OF 2022**

K KIMONDO, J

JUNE 13, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

MAHADH FARAH ALIAS ISSA ACCUSED

RULING

1. This is the third application for bail by the accused. It was first made on the date of plea on December 16, 2022. By a considered ruling dated December 30, 2022, the court declined to admit him to bail. He then sought review *vide* a notice of motion dated January 12, 2023. In ruling No 2 dated 27th May 2023, the court found that the matter did not merit review.
2. On both occasions, I directed that in the interests of justice, the trial be fast-tracked. Six witnesses have since testified and only three more remain.
3. On May 31, 2023, learned counsel for the accused sought further review. In his oral application, he submitted that all the close relatives of the deceased had testified. In his view, there are no more vulnerable witnesses and accordingly, the circumstances denying the accused bail have changed.
4. He also argued that contrary to the allegations by the state that the accused had no fixed abode or strong family ties, he was accompanied to court by many relatives and who were all willing to stand surety for him. He referred to the testimony of the six witnesses which showed that the accused was residing and had business interests in Eastleigh.
5. Counsel also revisited the medical condition of the accused which has continued to deteriorate due to lack of proper medical attention. He beseeched the court to be merciful and to set any conditions that



- would secure his release including any requirements to report to the police or the court on a regular basis.
6. The application is contested by both the Republic and counsel for the victims. Learned prosecutor submitted that the trial was at advanced stage with only three witnesses to go. She opined that the accused's "instincts for self-preservation were now heightened" and there was a real likelihood to abscond. Learned counsel for the victim's family added that the threats to the witnesses were real; and, that the nationality of the accused remained a live issue.
 7. The position taken by the Republic and by the victim's counsel is that there are no new grounds urged or any change in the original circumstances that led to denial of bail.
 8. By dint of article 50 (2) (a) of the Constitution the accused is presumed innocent. In addition, article 49 (1) (h) of the Constitution, as read together with section 123A (1) of the Criminal Procedure Code, entitled him to bail unless there be compelling circumstances.
 9. It is true that the close relatives of the deceased have all testified. But the denial of bail was not conditioned exclusively on the protection of vulnerable witnesses. In the impugned ruling made on December 30, 2022, the court identified three other conditions which amounted to strong and compelling reasons for denial of bail-
 - (15) Firstly, the homicide occurred on September 11, 2022. The accused was only arrested on December 4, 2022 as deposed at paragraphs 5 and 6 of the affidavit of the investigating officer. Although the accused claims he surrendered to the police after the incident, there is a dearth of evidence about it and the timelines do not fully support his assertions.
 - (16) Secondly, I cannot close my eyes to the serious allegations that the accused may be a Somali national. I say that very guardedly noting that he holds a Kenyan Identity card; and, that the issue remains contested. The allegations that he is the same person who faced a murder charge before the Banadir Regional Court has not been proved for now. But it is also a worrying matter.
 - (17) Granted all those circumstances, I find that the likelihood to abscond is high. Paraphrased, the attendance of the accused at his trial has been cast into doubt.
 - (19) Fourthly, the accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the September 11, 2022 at Maida Apartments, Eastleigh Area, Starehe sub-county within Nairobi County he murdered Abdifatha Hassan Baare alias Mrefu.
 10. In the subsequent ruling of May 31, 2023, I dealt at length with the deteriorating medical condition of the accused. In paragraphs 9 and 10 of ruling No 2, the court stated as follows-
 - [9]I have no doubt that he suffers from a chronic illness and that due to his age and conditions in custody, the situation can be dire. However, that fact is not new and was urged at the first bail hearing as is clear from the record and paragraph 5 of the impugned ruling.
 - [10] Furthermore, the attached report from the prison medical facility does not state that the accused cannot get medical attention in prison or at the referral hospital at Kenyatta. In fact, the accused admits that he has since attended a clinic at the Kenyatta National & Referral Hospital. What the report recommends is that "any assistance accorded to him will reverse the emotional stress and physiological distress being part of the perpetuating factors to the disease progression on the already compromised body organs".



11. The court has now had the benefit of the testimony of six prosecution witnesses. Like I stated earlier, the accused is still deemed innocent. Other than the plea for mercy, the other conditions for denial of bail have not been debunked. For instance, the allegations that the accused may be a Somali national still hover in the background. I stated in the impugned rulings that he holds a Kenyan Identity Card; and, that the issue remains contested.
12. It is true that the accused was accompanied by his relatives to court at the hearing of this case. However, the pre-bail report dated March 7, 2023 concludes on pages 3 and 5 that “no fixed abode was ascertained” and that “the probation office was also not successful in pinning the actual home of the accused’ in either Garsen or Nairobi. No fresh social report has been furnished to controvert it.
13. What all this translates to is that owing to the nature of the charge, and the stage of the trial, the likelihood to abscond remains high and the attendance of the accused for the remainder of the trial cannot be guaranteed.
14. The upshot is that no sufficient grounds have been laid for review of the orders made on December 30, 2022 and May 27, 2023. Bail is accordingly denied. The accused person shall remain in custody until the conclusion of the trial. I note the case is slated for hearing today and hopefully, the Republic should close its case.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2023.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

The accused.

Messrs Kanyoko, Weyobo & Otieno for the accused instructed by Kanyoko & Company Advocates.

Ms. Kigira, Ms. Maina & Ms Umra for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Akello watching brief for the victim’s family instructed by Sheikh & Shariff Advocates.

Mr. E. Ombuna, Court Assistant.

