



**Republic v Kinyua alias Muri (Criminal Case E024 of 2023)  
[2023] KEHC 18530 (KLR) (Crim) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18530 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E024 OF 2023  
K KIMONDO, J  
JUNE 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALLAN MURIITHI KINYUA ALIAS MURI ..... ACCUSED**

**RULING**

1. The accused prays for bail pending trial.
2. His learned counsel, Mr. H. Gatoto, submitted that bail is a constitutional right; that the accused is deemed innocent at this stage; and, that the replying affidavit sworn by the investigating officer merely rehashes the witness statements and unfairly presumes the guilt of the accused. In a synopsis, counsel opined that that in all the circumstances of this case, there are no compelling reasons for denial of bail
3. The application is opposed by the Republic. The objections are three-fold: Firstly, that the accused has no fixed abode and is therefore a flight-risk; secondly, that one of the witnesses is a minor and vulnerable; and, thirdly, that all the key witnesses live at the locus in quo at Kibarage slums raising a real likelihood with their interference.
4. Learned Prosecution counsel, Ms M. Kigira, submitted that the right to bail is not absolute. She relied fully on the replying affidavit of the investigating officer PC Benson Kemei sworn on 15<sup>th</sup> May 2023. She added that the State is amenable to a plea bargain.
5. On 30<sup>th</sup> May 2023, I heard further submissions from both the learned counsel for the accused and the State.



6. I take the following view of the matter. The accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the 1<sup>st</sup> April 2023 at Kibarage slums, Loresho area, Westlands Sub-County within Nairobi County he murdered Nicholas Mutuku alias Uncle.
7. It is a truism that the accused is presumed innocent. Under Article 49 (1) (h) of the Constitution, as read together with section 123A (1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.
8. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in Republic v Joktan Mayende & 3 others, High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR.
9. Furthermore, the overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic, Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR; Muraguri v Republic [1989] KLR 181; R v Fredrick Ole Leliman & 4 others, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
10. When I juxtapose those principles against the facts here, I find further as follows. It is true that the list of witnesses contains the name of a minor aged 16 years. There is no allegation by the Republic that he is related to the accused or is under his control. True, the other witnesses live in the Kibarage slums. That concern can be mitigated by an order to relocate. The accused maintains that he can be housed by his mother in the meantime. It would be unjust to say that merely because the accused was living in rental premises in the informal settlement he has no fixed abode.
11. In a nutshell, the affidavit by the investigating officer does not disclose compelling reasons for denial of bail. But I will set four stringent conditions to guarantee his attendance to court and to shield the witnesses from any threats or interference.
12. Firstly, the accused may now be released upon executing a cognizance in the sum of Kshs 500,000 (five hundred thousands) together with one surety of a similar sum. The surety shall be examined and approved by the Deputy Registrar of this Court.
13. Secondly, the accused shall not have any direct or indirect contact with any of the witnesses listed in the committal bundle until the conclusion of his trial.
14. Thirdly, the accused shall immediately relocate and must not set foot at Kibarage slums area in Nairobi, without prior permission of the court.
15. Fourthly, he must attend a special mention before the Deputy Registrar of the Criminal Division once every three months commencing 3<sup>rd</sup> July 2023 and until the conclusion of the trial or further orders of the court.
16. In default of any of the four conditions above, his bond shall stand cancelled; and, the surety shall be called to account.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JUNE 2023.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read virtually on Microsoft Teams in the presence of-**

Accused.



Mr. Gatoto for the accused.

Ms. Gikonyo for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

