



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Omar (Criminal Case E014 of 2021)
[2023] KEHC 21570 (KLR) (24 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE E014 OF 2021
SM GITHINJI, J
JULY 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MUDHFAR OMAR RESPONDENT

RULING

1. On 19/8/2021 the accused was temporarily denied bond on the grounds that there were compelling reasons to warrant such. He revisited the issue on 6th of October, 2022 through a Notice of Motion on the grounds that; -
 1. He has been in remand for one year and five months and the case has not yet started.
 2. The denial of bond on 19th of August, 2021 was temporary.
 3. The circumstances that led to denial of bond have now changed to the advantage of the applicant.
 4. It's in the interest of justice that the application be granted.
2. The application was canvassed orally on 26/4/2023. Mr Aboubakar, the Counsel for the Applicant averred that the accused is presumed innocent till otherwise established. He has a family in Malindi and fixed abode. He is willing to abide by any terms the Court may grant. He is unlikely to interfere with witnesses as they relocated from Malindi. Some are said to have gone abroad. Bond or bail under article 49 (h) of *the Constitution* is a fundamental right to a suspect which can only be denied if there are compelling reasons. The prosecution has not availed compelling reasons.



3. The prosecution opposed the application and relied on the affidavit sworn by P.C Joseph Mwangi, the investigating officer in the case. He reveals that the applicant was initially charged with attempted murder but the victim later succumbed to the injuries sustained leading to the current charge of murder. The witnesses are well known to the suspect and if released on bond he will most likely interfere with them. The circumstances prevailing prior to 19th of August, 2021 which led to the accused being denied bond are still in existence and if anything has changed, is in favour of bond denial. He indicated his willingness to avail witnesses for hearing, stating that they have not entirely occasioned the indicated delay which was mostly caused by the defence.
4. Determining on the issue, I wish to indicate that Bail or Bond is not an absolute right to the accused as under article 49 (h) of *the Constitution* it can be curtailed on compelling circumstances. The question then is whether in this case the prosecution has brought forth compelling reasons to warrant denial of bond to the accused person. No doubt that the accused is charged with a serious offence of murder which raises his chances to abscond, but nevertheless, it is aailable offence. It is indicated that the victim is an ex-lover of the accused and the witnesses are well known to him and hence the possibility of interfering with them if released on bond. Though the defence indicates most witnesses have relocated from Malindi, some even to abroad, it is not stated which ones have relocated where, and evidence of such was not availed apart from raising mere allegation. I therefore agree with the prosecution that since 19/8/2021 when bond was denied, nothing has changed in favour of release of the accused on bond. If anything, the charges are to his disadvantage. Compelling reasons still subsists warranting him be denied bond.
5. The application is therefore dismissed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 24TH DAY OF JULY, 2023

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S.M.GITHINJI

JUDGE

In the Presence of ; -

The Appellant in Person

Ms Mutua for the Prosecution

Mr Aboubakar for the Applicant

