



REPUBLIC OF KENYA



**Republic v Maraga (Criminal Case E010 of 2023)
[2023] KEHC 20646 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E010 OF 2023**

RL KORIR, J

JULY 20, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

ISAAC MARAGA ACCUSED

RULING

1. The Accused was charged with the offence of murder contrary to section 203 of the *Penal Code*. The particulars are on 25th May 2022, the Accused pleaded not guilty to the charge.
2. Defence Counsel Mr. Leteipa promptly sought an extension of the bond terms earlier granted by the lower court. He stated that they already had a bond of Kshs 70,000/= in a related matter which was Criminal case Number E009 of 2023. Counsel submitted that the Accused had attended the DCI and would be willing to abide by the bond terms. He further submitted that there were no compelling reasons to deny the Accused bond.
3. Mr. Njeru Prosecution Counsel submitted that the bond of Kshs 70,000/= was not commensurate to the offence. While not opposing the Application for bond, he urged the court to enhance the terms.
4. Bail and bond are constitutional rights provided under Article 49(1) (h) of *the Constitution*. The provision is clear that, unless there is some compelling reason, an Accused person ought to be released on bail, as a matter of right. It provides that: -

“An arrested person has the 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.”



5. In the Bail and Bond Policy Guidelines at Paragraph 3.1 (a), it is recommended that: -

“.....Every accused person shall be presumed innocent (Article 50(2) of *the Constitution*). This is the primary rationale for the requirement of *the Constitution* that an arrested person has the right to be released on bail or bond.

The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.....”

6. In addition, the Bail and Bond Policy Guidelines, at Paragraph 4.9 states that: -

In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.....

7. It is the duty of the Prosecution to bring to the attention of the Court the existence of any compelling reasons to deny the Accused bail. In *Republic vs. Danson Mgunya & Another* (2010) eKLR the court stated:-

“.....I do hold that if the prosecutor objects to the release of the Accused from detention during the pendency of a trial, then at the first instance, the burden should be on the prosecution and not the accused person to prove or at least demonstrate the existence of the “compelling reasons”.

8. In this case the Prosecution has not brought forth any compelling reasons.

9. A pre bail report in respect of the Accused was filed by the Probation officer on 26th June 2023. The report states that the Accused and the deceased were formerly students at Bomet University and were in a relationship. That their respective families were not known to each other. The Report further made an assessment that the Accused was not flight risk.

10. I have considered the Application. As earlier stated, the Application was not opposed by the Prosecution. With respect to the victims, I have taken into account the fact that the Accused if released would go to his home in Kisii County and there was no likelihood of hostility from the deceased’s family who live in Nyandarua County.

11. In the end, I find that the Accused merits to be released on bond/bail. He is granted bond on the following conditions: -

- i. He shall execute a personal bond of Kshs 500,000/= and provide 2 sureties of similar amount.
- ii. He shall not interfere with prosecution witness or derail the trial in any way.
- iii. He shall attend Court whenever required.

12 Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 20TH DAY OF JULY, 2023

.....



R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Njeru for the State, Mr. Leteipa for the 1st Accused and holding brief for Mr. Odundo for the 2nd Accused and Siele (Court Assistant)

