



**Republic v Kimula (Criminal Case E014 of 2022)
[2023] KEHC 20634 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E014 OF 2022
TM MATHEKA, J
JULY 19, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

NICHOLAS KATUA KIMULA ACCUSED

RULING

1. Nicholas Katua Kimuli alias Mwalimu is charged with murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63), Laws of Kenya. The particulars of the offence being that on the June 17, 2022 at Masalami Village in Kyale Sub-Location within Kiboko Location, Makindu Sub-County of Makueni murdered Julius Kimula Kisulu.
2. He pleaded not guilty on March 22, 2023. His application for bond was opposed on the ground that he had attempted to escape from lawful custody. That he was a flight risk. An affidavit was filed by the Investigating Officer sworn on December 19, 2022. He denied the allegations saying that it was the prison officers who had assaulted him and the allegations were untrue.
3. His advocate Mr Muthiani objected to these submissions on the ground that no affidavit had been served on them on the issue.
4. I sought a Pre Bail Report. It was filed on April 5, 2023. I have carefully considered its contents. The accused has been found unsuitable for release on bond for being a flight risk.
5. The explanation that he is a flight risk is set out in the affidavit by the Investigating Officer that the accused was living on the border within Tanzania at Loitoktok and could easily escape to the foreign country. The allegations of attempt to escape have culminated in a Criminal Charge in Makueni MCCRC E007/2023/. He is however innocent until proven guilty of this offence. In fact even on this charge he is eligible for release on bond if there are no compelling reasons for his release. However the charge could be construed as an indication that perhaps the accused could be a flight risk.



6. It is reported that the community where he comes from is not ready to receive him. However, I have noted that this is mainly the step family. From the Pre Bail Report, the victim was his own father, and there was a step family – the 2nd wife and children of his father.

These are the ones who are not ready to receive him at home. There has been a history of disagreements and this is expected. I have carefully considered their entire objection and the issue is whether they amount to compelling reasons as required by Article 49(1) (h) of the Constitution.

7. I have noted that the accused's mother has committed to ensuring that he attends court if released on bond.

8. It is evident that this is a case emanating from a family feud and for as long as the feud is unsettled – the step family will never be agreeable to the accused being released on bond. In any event a conditional bond order would be in the circumstances of this case; on condition that he does not in any way contact the members of that family/ or visit that home.

9. These concerns could amount to compelling reasons depending on the circumstances. The concerns of the prosecution cannot be ignored. It is not in dispute that the accused had moved to the border town of Loitoktok. That is where his wife and children live. The Probation Officer did not carry out any social inquiry from that area to see whether the accused has the social capital that would deter any thoughts of absconding. However it is my view that it would be unfair to go by a report carrying information about a place and persons with whom the accused was not spending time with at the time of the arrest.

10. The probation officer is therefore directed to carry out a further social inquiry from the area where the accused resides including but not limited to interviews with the local administration, and place of worship as accused was said to be a member of the choir.

11. To that end orders on bond will abide by this further social inquiry report to be made available to court within 14 days hereof.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 19TH JULY 2023

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MUMBUA T. MATHEKA

JUDGE

CA Mwiwa

Accused present

Mr. Tanui for state

