



**Republic v Bargoge (Criminal Case 62 of 2014)  
[2023] KEHC 20185 (KLR) (11 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20185 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 62 OF 2014**

**TA ODERA, J  
JULY 11, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEORGE KOMEN BARGOGE ..... ACCUSED**

**RULING**

1. Accused is charged with murder contrary to section 203 of the penal code. Plea was taken on May 12, 2014 before Hon Justice HA Omondi who granted him bond of Kshs 100,000/= WSLS.
2. On June 20, 2023, counsel for accused applied for bond review the issue of bond review on the ground that he is unable to raise the two sureties as ordered. He said accused has been in custody for 1 ½ years and that he is the sole bread winner of his family. Further that he will not abscond and that he missed court due to corona pandemic.
3. The prosecuting counsel submitted that accused caused enhancement of his bond terms and urged this court to look at the record.
4. I have carefully considered the application for bond review sentiments of prosecution and the record herein. Bond is available to all accused under Article 49 (1) (h) of the *constitution of Kenya* as a matter of right unless there are compelling reasons to deny the same.

“The bail bond guidelines of Kenya provides for what the court should consider before granting or denying bail and the purpose of bond is to ensure that accused comes back to court without fail pending hearing and determination of his case.”

5. Accused is charged with murder contrary to section 203 of the penal code. Plea was taken on October 3, 2022 before Hon Justice Chemitei who granted him bond of Kshs 500,000/= WSLS.



6. On the issue of bond review, on February 28, 2023, counsel for accused Miss Sabaya sought bond review the prosecuting counsel informed the court of the bond terms granted. At that point defence counsel sought a pre-bail report. Mention was set for March 14, 2023. On that date, defence counsel was absent and the prosecution counsel informed that court that the pre-bail report had been filed and that the family of deceased were still bitter with accused. This court proceeded to make determination of the application for bond review and ordered that the bond terms remain the same.
7. Today defence counsel has asked this court to look at the sentiments of the community and recommendations in the pre-bail report. I will deal with the issue since this is a criminal matter and bond review can be revisited at any time and accused was not represented on March 14, 2023.
8. I have carefully considered the application for bond review and sentiments of prosecution. Bond is available to all accused under Article 49 (1) (h) of the [constitution of Kenya](#) as a matter of right unless there are compelling reasons to deny the same.
9. The bail bond guidelines of Kenya provides for what the court should consider before granting or denying bail and the purpose of bond is to ensure that accused comes back to court without fail pending hearing and determination of his case. In the case of [Nganga v Republic](#) [1985] eKLR 451, it was held that;

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused there are a number of matters to be considered. Even without the constitutional provisions (section 72(5)) generally in principle, and, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless it is shown by the prosecution that there are substantial grounds for believing that;

- (a) the accused will fail to turn up at his trial or to surrender to custody; or
- (b) the accused may commit further offences; or
- (c) he will obstruct the course of justice.

The primary purpose of bail is to secure the accused person’s attendance at court to answer the charge at the specified time. I would, therefore, agree with Mr Karanja that the primary consideration before deciding whether or not to grant bail is whether or not the accused will attend his trial.”

10. In this case, bond was not objected to and the same was granted during plea. The record indicates that accused absconded from July 7, 2021 till April 5, 2022 when he was arrested and brought back to court. On June 23, 2022 he was re-admitted to bond of Kshs 500,000/= with two sureties in the like sum and that the security be any other document other than a pay slip. I have taken into account the capital nature of the offence accused is facing and the sentence to be imposed in case he is convicted and the record of absconding. Accused disappeared for 9 months and he had to be arrested to come back to court. He is clearly a flight risk. I find that the bond granted to him is fair and reasonable in the circumstances to ensure that he comes back to court. I see no reason to interfere with the same. I disallow the application for bond review.

**T.A. ODERA - JUDGE**

**7.2023**



**SIGNED AND DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;  
ACCUSED,**

**BOSIRE FOR ACCUSED,**

**MS MBURU FOR STATE,**

**COURT ASSISTANT: BOR.**

**T.A. ODERA - JUDGE**

**7.2023**

