



**Republic v Murunga (Criminal Case E004 of 2023)
[2023] KEHC 19496 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E004 OF 2023**

F GIKONYO, J

JULY 5, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH KISERIAN MURUNGA ACCUSED

RULING

Bond/Bail Application

1. The accused person herein is facing a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. On 10/05/2023, through his defense counsel applied to be released on bond or cash bail.
3. Ms. Pion argued in court that the accused has small children left behind by the deceased and that the children are suffering without both parents. She urged this court to release him to take care of his children. She further added that the accused has a known fixed abode.
4. Mr. Okeyo, the prosecution counsel, objected to the release of the accused person on bond.
5. The prosecution filed an affidavit to oppose the bond, sworn on 10/05/2023 by PC Abdullahi Hassan. The deponent stated reasons they believe constitute compelling reasons not to release the accused on bond, to wit: -
 - i. Witness interference -that the accused person is likely to interfere with the crucial witnesses and other witnesses who are relatives/ neighbours to the accused person. The crucial witness is a juvenile aged 8 years and also son of the accused.
6. The accused person did not file any replies.



Analysis and Determination

Right to bail

7. A person charged with a criminal offence is entitled to be released on bond on reasonable conditions pending trial except where there are compelling reasons not to be so released (art. 49(1)(h) of the [Constitution of Kenya, 2010](#)). The right is premised on the right to be presumed innocent until the contrary is proven ([R. vs. Richard David Alden](#) (2016) eKLR.)

Compelling reason and burden of proof

8. The prosecution bears the onus of proving compelling reasons not to release the accused on bond. And, such should be reasons that justify the limitation of the right to liberty in the context of article 24 of the [Constitution](#). Given the heightened scrutiny of the law on limitation of rights, the standard of proof of compelling reason is therefore, higher than mere balance of probabilities. Examples of such reasons include; interference with witnesses; interference with or possible destruction of some specific evidence; interference with investigations- this is broad but becomes pointed if the accused holds a high position of influence or authority; likelihood of absconding; being a citizen of enemy country or with which Kenya is at war et al.

Objective of bail

9. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial ([Muraguri v Republic](#)).

Grounds for objecting bond

10. The prosecution cited interference with witnesses as the only ground for opposing bail.

Interference with witnesses

11. ‘...interference with witnesses is a highly potent ground on which the accused may be refused bail’ ([R. vs. Jaktan Mayende & 3 others](#)), and is an affront to the administration of justice ([R. vs. Patius Gichobi](#)).
12. But, the specific instances of or likelihood of interference with witnesses such as; promises to confer or conferment of a benefit, bribery, assault, intimidation, threats, harassment, abuse, blackmail, improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give skewed evidence, must be presented and proved in court by the prosecution (supra [R. vs. Jaktan Mayende & 3 others](#), [R. vs. Dwight Sagaray & 4 others](#), 2013 eKLR).
13. The prosecution claims that some of the witnesses are close relatives of the accused and are likely to be interfered with by the accused. It is alleged that the accused murdered his wife, Gladys Murunga in the presence of his children, the older being 8 years old. The minor, Meshack Lekishon aged 8 years and also son of the accused person is one of the key witnesses in this case.
14. These are victims of the crime whose rights the court has a duty in law to protect and uphold.
15. Of specific relevance here is the victim’s right to; ‘Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse (S. 10(1)(a) of [Victim Protection Act](#)); ‘Have their safety and that of their family considered in determining the conditions of bail and release of the offender’; (*ibid* S.10(1)(b)).



16. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of the family who are witnesses against him, make them vulnerable to harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused person. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions.
17. In this case, it will be naïve not to consider the likelihood of the accused to interfere with his 8 years old son to his advantage. This is one of small children the accused is claiming are alone and need him to be with them.
18. It is therefore, appropriate that these victims should be free from harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons; a right under section 10 of the Victims Protection Act. It is not also lost to the court that the safety of victims is to be taken into account in determining bond issues. The young boy falls in the category of victims whose safety should be guaranteed.
19. A close neighbor as is the case here is not in any better situation.
20. Consequently, I find that the prosecution has proved that the accused is likely to interfere with witnesses herein.
21. In light thereof, the need to guarantee the integrity of the trial, the safety of the witnesses, and to free them from harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused makes it necessary to deny the accused bail (*R. vs. Fredrick Ole Leliman & 4 Others*, Nairobi Criminal Case No. 57 of 2016 (2016) eKLR and *K K K vs. Republic* [2017] eKLR)

Conclusion and Orders

22. In conclusion, I find there is a compelling reason not to release the accused person on bail. He will remain in custody during the hearing of the case. In light thereof, I direct the hearing of the case to be fast-tracked.
23. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 5TH DAY OF JULY, 2023**

.....

F. GIKONYO M.

JUDGE

In the Presence of:

1. CA – Leken
2. Ms. Pion for Accused - present
3. Mr. Okeyo for DPP - present

