



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Karimi (Criminal Case E009 of 2023)
[2023] KEHC 27365 (KLR) (2 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 27365 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E009 OF 2023
SN MUTUKU, J
AUGUST 2, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHRISTINE KARIMI ACCUSED

RULING

Introduction

1. The accused, Christine Karimi, is facing two charges of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of this offence state that on the 8th day of June 2023 at Maasai Lodge area within Ongata Rongai Township, Kajiado North Sub-County within Kajiado County, the accused murdered Tamara Amani Atieno and Tyrel Abiud Agogo.
2. The plea was taken on July 18, 2023. The accused pleaded not guilty to the charges.
3. The accused, through her legal representative, Mr. Ongaro, advocate, moved this court on the same day of the plea through an oral application seeking orders to admit the accused to bail/bond pending the hearing and determination of this case. It is in respect of this application that this ruling relates.

Submissions

4. Mr. Ongaro, counsel for the accused, submitted that bail/bond is a constitutional right under article 49 (1) (h) of the *Constitution*. He submitted that the Judiciary Bail and Bond Policy Guidelines also favour the granting of bail, and that bail can only be denied in limited circumstances where compelling reasons exist.
5. It was submitted that the accused is a Kenyan citizen; that she is not a flight risk; that if released on bail, the accused will live in Kiserian in her mother's house whose location can be shared with the prosecution and the police. It was submitted that the accused has a medical condition which require



close presence of family members who understand her condition and that she has no capacity to interfere with witnesses.

6. The Prosecution opposed the application for bail through the Affidavit of PC Evans Owino, a police officer attached to DCI Rongai Police Station, sworn on 18th July 2023. Ms Nyaroita, learned Prosecution Counsel in charge of prosecuting this case, told the court that she will rely on the Affidavit in opposing this application.
7. The Affidavit states that the accused is facing a serious offence and if granted bail/bond she may be motivated to commit suicide to evade the punishment; that the investigations have reviewed that the accused has attempted, twice, to commit suicide before she committed this offence and once after committing the offence. It is also deposed that the accused is likely to interfere with witnesses, including her husband who is one of the witnesses and tenants at Taria Apartments where the accused lived. It is further deposed that the accused has refused to cooperate with the police and chose to remain silent and therefore her place of abode after bail is granted is not known to the police.
8. On the issue of the seriousness of the offence, Mr. Ongaro submitted in his rejoinder that the accused is presumed innocent until the contrary is proved; that there are no particulars have been given of the alleged suicide attempts by the accused; that the affidavit does not state when, where the accused attempted suicide or by what means.
9. It was submitted in respect of likelihood of the accused to interfere with witnesses, that she has not reached out to any witness and that she does not know any witness given that witness statements have not been served on her- and that paragraph 6 of the affidavit is speculative and lacks merit.
10. It was submitted that if bail is granted this court can exercise its discretion to grant orders to enable the accused report to any authority, either the area Chief or Keserian Police Station.
11. It was submitted that the constitution spells out the rights of an arrested person including right to remain silent with the obligation to the police to inform an arrested person of that right to remain silent. It was submitted that in view of paragraph 7 of the affidavit, the police in this case did not inform the accused of her right to remain silent and that the Investigating Officer ignored the accused right to remain silent and concluded that she was guilty by virtue of her remaining silent.

Determination

12. I have considered the issues raised in this application. The rights of an arrested person are clearly spelt out under article

49. Rights of arrested persons

- (1) An arrested person has the right—
 - (a) to be informed promptly, in language that the person understands, of—
 - (i) the reason for the arrest;
 - (ii) the right to remain silent; and
 - (iii) the consequences of not remaining silent;
 - (b) to remain silent;
 - (c) to communicate with an advocate, and other persons whose assistance is necessary;



- (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
 - (e) to be held separately from persons who are serving a sentence;
 - (f) to be brought before a court as soon as reasonably possible, but not later than —
 - (i) twenty-four hours after being arrested; or
 - (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
 - (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
 - (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
13. The right to be released on bond or bail is a right that can be limited where there are compelling reasons. In *Watoro v Republic* [1991] eKLR, the court held that:
- i. The paramount consideration in bail applications is whether the accused will turn up for his trial.
 - ii. The seriousness of the offence in the terms of the sentence likely to follow a conviction has been held repeatedly to be a consideration in exercising discretion.
 - iii. It would be wrong to leap to the conclusion that the accused was guilty merely because he had been charged and to decide the bail application on that basis.
 - iv. Nevertheless, the seriousness of the offence has a clear bearing, which the Court ought to bear in mind, on the factors influencing the mind of an accused facing a charge in respect of that offence is to whether it would be a good thing to skip or not.
14. For ends of justice to be met, an accused person must avail himself/herself to court for the trial to the conclusion. It is only after a full trial, participated fully by an accused person, that the court can determine whether he/she is guilty or not and therefore ensure that justice is done.
15. In determining the seriousness of the offence facing an accused person, courts must balance with the presumption of innocence of an accused. It is only after all the evidence has been adduced and has been subjected to cross-examination in a full trial that the court can determine the guilt or otherwise of an accused whether the offence is a serious one or a misdemeanor.
16. I have considered the issues raised in this application. I am persuaded that the accused will present herself to court for trial until this case is fully determined. As argued by counsel for the accused, there are no particulars that the accused attempted to commit suicide. I also find no evidence that the accused will interfere with the witnesses. If there is any such danger, which has not been demonstrated, the police have, in deserving cases, protected any witness who is threatened with any danger. I see no danger from the accused to any witness.
17. The place where the accused will be residing if admitted to bail has been disclosed and the defence is ready to share all the particulars of that place with the prosecution and the police. Further, the relatives of the accused seem ready and willing to support her during the pendency of this trial.



18. For the above reasons and after careful consideration of all the evidence tendered in this application, I am not persuaded that there are compelling reasons to make me deny the accused bond pending the hearing and determination of this case. Consequently, I hereby allow this application and admit the accused to bail/bond on the following terms:

- i. The accused shall be released on a bond of Kenya Shillings Two Million (Kshs 2,000,000) with two sureties of Kenya Shillings One Million (1,000,000) each.
- ii. In the alternative to (i) above, the accused shall deposit with the court Kenya Shillings Five Hundred Thousand (Kshs 500,000) cash bail.
- iii. She shall not contact any witness in this case.
- iv. She shall not go back to the Taria Apartments where she used to reside before this case.
- v. She shall attend court without fail until this case is fully determined.

19. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 2ND AUGUST 2023.

S. N. MUTUKU

JUDGE

