



**Republic v Muendo (Criminal Appeal E014 of 2023)
[2023] KEHC 22686 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E014 OF 2023
SM GITHINJI, J
SEPTEMBER 25, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHNSTONE MAKAU MUENDO APPELLANT

RULING

CORAM: Hon. Justice S. M. Githinji

Appellant in person

Ms Mutua for the State

1. The four applicants were charged on August 16, 2023 with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#), chapter 63 of the Laws of Kenya.
2. The particulars of this offence are that on November 16, 2022 at around 03:00 hours at Mazeras/ Mgumo Wa Pasta sub location, Ganga “B” village within Rabai sub county, the accused jointly with another before court, within Kilifi county, murdered Anderson Tsuma Mazia.
3. In the file there is an affidavit made by the investigating officer, who had deponed that the accused are a flight risk and there is intelligent report that they are likely to flee to Tanzania. It’s also indicated that they are likely to interfere with witnesses and may therefore jeopardize the prosecution case.
4. After we took plea the prosecutor averred that they have started the process of having some witnesses put under protection and bond can be withheld till the process is completed.
5. Mr Mouko applied for bond in respect of all the accused persons. He averred that the alleged affidavit is an ambush to the defence as they were not served with the same. The alleged affidavit is not commissioned and is not properly in court. There is no compelling grounds upon which bond to the accused person, of which is a constitutional right, should be curtailed.



6. Under article 49 (1) (h) of the Constitution of Kenya, 2010, bond or bail is not an absolute right to an accused person. It can be curtailed on compelling reasons availed by the prosecution. In this case the investigating officer has expressed grounds for fear that the accused persons if released may interfere with witnesses who are already in process of being placed under protection. There is also a chance that they may flee to Tanzania. The prosecution requested for temporary denial of release on bond or bail, to enable them place some witnesses under protection. This to me avails compelling reason on which the bond can be withheld or denied. I therefore do find the application by the prosecution merited and is hereby granted.
7. The accused will be held in custody till the stated circumstances changes to the advantage or favour of granting bond or bail.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 25TH DAY OF SEPTEMBER, 2023

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S.M.GITHINJI

JUDGE

In the Presence of: -

1. The Appellant in Person
2. Ms Mutua for the Prosecution
3. Ms Mawiya Mutuku for the Accused Persons as well as Mr Mouko

