



**Republic v Mwaniki (Criminal Case 6 of 2020)  
[2023] KEHC 22318 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22318 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 6 OF 2020  
PM MULWA, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN KABENA MWANIKI ..... ACCUSED**

**RULING**

1. By a Notice of Motion dated June 30, 2022, the Accused/Applicant sought the review of the court orders of April 15, 2021 which denied him bond/bail. He prays that the said orders be set aside and he be admitted to reasonable bond/bail terms pending trial for two counts of the offence of murder c/s 203 as read with 204 of the *Penal Code*. The particulars of the information are that on the accused person had “on the 10<sup>th</sup> day of January 2020 at unknown time within Ruiru Area in Ruiru Sub-County, Kiambu County murdered Luniz Macharia (in count I) and Princewill Muchina (in count II).”
2. This court had by its Ruling dated April 15, 2021 declined to grant the accused person bail and observed that  

“I make a finding that there is a just cause to deny accused bail. I will deny the accused bail and order that he continues to be detained in custody in order to prevent him from interfering with the administration of justice and in order to avoid harm to himself by the irate public.”
3. I do not wish to reiterate the reasons which led the court to reach its decision on bond/bail, suffice it to state that the accused in asking for review of that decision principally submits that circumstances have since changed and he is ready and willing to abide by any orders that the court may grant as conditions to admission to bail.



4. For the DPP, it was contended that the state had opposed bond in this case from the onset and that circumstances then, still obtain today.

### **Determination**

5. In considering the changed circumstances test in Misc. Criminal Application. No. 55 of 2014 *Republic v Diana Suleiman Said & another* [2014] eKLR, the court held as follows:

“The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.”

6. While the burden of proof with regards to changed circumstances may appear to fall on the accused as the applicant for bail review, it is really a matter that falls for consideration under the general principle that an accused person is entitled to bail unless compelling reasons exist for refusal. Where bail has previously been refused on the basis of pre-existing situation, either party, if it so desires can demonstrate the non-existence or otherwise the continued existence of compelling reasons in the circumstances of the case.
7. The Prosecution, although served with the application dated June 30, 2022, did not file any response thereto. The Prosecution cannot, in the respectful view of the court, block the review of an order on bail on the ground that there has not been demonstrated any changed circumstances where it has defaulted in formally responding to the contrary.
8. Ten (10) prosecution witnesses have testified in this case and according to the state counsel six (6) are remaining. There is therefore no likelihood that there would be interference with witnesses as the “vulnerable” ones have since testified. There is no evidence that the ground is still volatile for the accused person as there should have been an affidavit by the Investigation Officer in response to the application for review of bail indicating that there are still live hostilities. It was incumbent upon the prosecution on service of the application for review to demonstrate that nothing has since changed since the ruling of 15<sup>th</sup> April 2021 as to require further continuance of the order for denial of bail.
9. In reaching a determination, the court is, of course, mindful that an accused who is facing multiple charges, especially of serious charges such as murder has a lot of incentive to interfere with the administration of justice. And therefore, the court does not however, disregard the prosecution’s concerns. But in this case, the court is minded to review the bail refusal order in respect of the accused person on account of changed circumstances – that majority of the witnesses have testified and passage of time, and the time it may take to conclude the hearing of the case.
10. However, in the event of any breach of bond/bail conditions, the thereof shall extinguish and the prosecution shall be at liberty to apply for such orders against the accused person.
11. Accordingly, for the reasons set out above, the Court makes the following orders:
  - a). The application for bail pending trial dated June 30, 2022 by the accused person, is hereby allowed.



- b). The accused person is granted a bond of Kshs 1000,000/= with two (2) sureties for the same amount;
- c). The accused shall not communicate with the prosecution witnesses whether by physical contact, mobile or other telephony or by other means of communication, either directly or through proxy, until the conclusion of the trial or until further orders of the court.
- d). The prosecution shall be at liberty to apply for cancellation of the bail granted to the accused herein in the event of breach of any of the terms hereinabove set out.

Order accordingly.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2023.**

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**P.M. MULWA**

**JUDGE**

