



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muthee & 4 others (Criminal Case 15 of 2018)
[2023] KEHC 22285 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 15 OF 2018
J WAKIAGA, J
SEPTEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALICE MUGEKI MUTHEE 1ST ACCUSED

SAMUEL HARRISON GITU MAINA 2ND ACCUSED

FRANCIS MAINA MAKENYA 3RD ACCUSED

BENSON MWANGI KAMAU 4TH ACCUSED

MICHAEL KIMANI WAITHAKA 5TH ACCUSED

RULING

1. The accused persons face a charge of murder. The particulars of which were that on May 12 and 13, 2018 at Gakurwe Location within Murang'a County murdered Samuel Muthee Mbogo.
2. All the accused persons save for the 4th accused person withdrew their application for bond on the strength of the pre-bail report filed in Court on July 30, 2018.
3. By an application dated August 23, 2022 the 4th accused moved the Court to be admitted to bond on the grounds that his family was suffering as he was their sole means of support and that he was willing to attend Court should he be granted bond as he had a fixed place of abode within Murang'a County.
4. The Court ordered for pre-bail report in which it was stated that he was a matatu driver married with two children whose family was living miles away from the home of the deceased, whose community were not ready to see him released, whereas his villagers were not opposed to his release.
5. It was stated by the local administration from the victim's area, that the deceased children dropped out of school after his death a situation that had angered the community and that there was likelihood of



interference with witnesses some who were minors. It was stated that the chief of his area Kamacharia Location was opposed to his release on account of being a flight risk.

6. On the victim impact statement, it was stated that they had suffered emotionally and financially since the deceased was the head of the family and sole bread winner and were therefore opposed to having the accused out on bond on the ground that having the accused in custody will help them heal from the loss of the deceased and that the accused was a flight risk who was likely to interfere with the witnesses or attack them.
7. For record purposes this matter is part heard, two prosecution witnesses having testified before the Court and therefore the Court is entitled to evaluate the strength of the prosecution case while determining the application for bond. The two witnesses who testified before the Court did not make any mention of the 4th accused person and therefore the evidence so far on record cannot provide initiative for the same to run from the cause of justice.
8. In this cause the only reason advanced by the prosecution in opposition to the accused being granted bond is through the probation report in which as expected the family of the deceased and the local administration, contended that the release of the accused will provoke them and therefore interfere with the peaceful co-existence.
9. The purpose for bond remains to secure the attendance of an accused person at his trial and the accused will only be denied bond if there are compelling reasons to demonstrate that he is likely to fail to attend the Court proceedings as was stated in R v Robert Zippor Nzilu [2018] eKLR.
10. It is clear that the prosecution has not demonstrated on a balance of probability that the accused is unlikely to attend to his trial, neither have they provided any compelling reasons as required under Article 49(1)(h) of *the Constitution* that the Applicant is likely to interfere with the course of justice and that the issues raised in the pre-bail report can be adequately mitigated for by appropriate bond and bail terms.
11. In the absence of compelling reasons, it logically follows that the accused is entitled to bond and therefore order that the 4th accused person be released on bond/bail on the following terms and conditions;
 - a. Bond of Kenya shillings one million (Kshs 1,000,000) with one surety of similar amount.
 - b. In the alternative cash bail of Kenya shillings two hundred and fifty (Kshs 250,000) with two sureties of like amount.
 - c. The accused shall have no contact of whatsoever nature with any of the prosecution witnesses including those who have testified.
 - d. Upon his release, he shall report to his area Assistant Chief and shall be reporting to the same each last Thursday of the month until the final determination of the cause.
 - e. The said Assistant Chief shall file monthly report on the conduct of the accused person with the Deputy Registrar of this Court.
12. And it is ordered.

DATED, SIGNED AND DELIVERED THIS 19th DAY OF SEPTEMBER, 2023

J. WAKIAGA

JUDGE

