



**Odour v Republic (Criminal Case E040 of 2022)
[2024] KEHC 11745 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E040 OF 2022**

A MSHILA, J

OCTOBER 4, 2024

BETWEEN

BENARD OKOTH ODOUR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*; he is accused of having murdered Lucy Ngendo Waitathu on the 8th September, 2022.
2. An application is before this court whereby the accused through his Learned Counsel Mr.Ochieng has applied for a review of his bail/bond terms pending the hearing and determination of the murder case; that the offence was not committed within the locality and therefore there was no hostility between the accused and the community; the family was willing to assist the accused secure the bond and prayed for favourable terms.
3. The Prosecuting Counsel for the State opposed the application on the grounds that there was a typographical error in the Ruling as to where the accused was arrested; the same reads that the accused was arrested in Homabay whereas the correct narrative was that the incident had occurred in Kabete and the accused had been arrested in Kisumu but the fact still remains that he was arrested many counties away and was therefore the accused was still a flight risk; Seven (7) prosecution witnesses had testified and six were remaining and for the forgoing reasons Counsel urged the court not to admit the accused to bail but to instead expedite the hearing of the case which was nearing the tail end;
4. This court states that with the advent of the new Constitution 2010 times have indeed changed and that although the accused has been charged with a serious offence of murder which carries a heavy sentence, the offence is bailable;



5. The above notwithstanding the right to bail has limitations and the same may be denied if compelling reasons are found; the victims family filed an affidavit in which it was averred that the accused was a still a flight risk and that was a compelling reasons to support the accused's continued detention or denial of bail; and the state support the fact that there is a likelihood that if released the accused may disappear and interfere with investigations and witnesses.
6. Having given due consideration to the application before this court which is opposed; and having noted the contents of the Ruling dated 23rd February, 2023 the fact still remains that the accused has still not rebutted the allegation that ' he went into hiding after the occurrence of the offence and that he was arrested' whilst in Kisumu which was many counties away;
7. For the forgoing reason this court is satisfied that there are compelling reasons to support the accused's continued detention and denial of bail;

Findings And Determination

8. The application for bail is found to be devoid of merit and it is hereby disallowed.
9. Hearing on 9/10/2024 for fixing a hearing date.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 4TH DAY OF OCTOBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

N/A – for the State

Ochieng – for the Accused

Accused – present

