



**Republic v Migiro & 3 others (Criminal Case E009 of 2023)  
[2024] KEHC 13949 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E009 OF 2023  
WA OKWANY, J  
OCTOBER 24, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EZEKIEL MOGENI MIGIRO ..... 1<sup>ST</sup> ACCUSED**

**PERIS ONDARA ..... 2<sup>ND</sup> ACCUSED**

**DENNIS ONDARA CLEMENT ..... 3<sup>RD</sup> ACCUSED**

**PETER NJOROGE KIRIKA ..... 4<sup>TH</sup> ACCUSED**

**RULING**

1. At the hearing of this case on 9<sup>th</sup> October 2024, Mr. Nyaberi Learned Counsel for the accused persons sought a review of the bond terms granted to the 2<sup>nd</sup> Accused herein, Peris Ondara, on the basis that she was unable to meet the bond terms granted by this court.
2. The 2<sup>nd</sup> Accused’s first applied to be released on bond upon taking plea. This court called for a Pre-Bail Report with a view to determining her suitability to be released on bond pending trial. The pre-bail report filed on or about 21<sup>st</sup> June 2023, did not favour the release of 2<sup>nd</sup> Accused owing to the reported hostility from members of the public following the murder of the deceased persons herein. This court therefore declined to grant the 2<sup>nd</sup> Accused bond but with a rider that she could make a fresh application on a later date should the tension on the ground subside.
3. On 19<sup>th</sup> October 2023 Counsel for the Accused made another application for bond and the Probation Officer filed yet another Pre-Bail Report wherein he indicated that the members of the public and the victims’ family were still hostile and opposed to the release of the 2<sup>nd</sup> Accused on bond. In a Ruling delivered on 9<sup>th</sup> November 2023, this Court once again declined to grant the application for her release on bond.



4. The Defence Counsel renewed the application for Bond for the third time on 29<sup>th</sup> November 2023. The Prosecution opposed the Application on the basis that they were yet to avail civilian witnesses whom they considered to be vulnerable at the time. This Court declined to grant the 2<sup>nd</sup> Accused bond but with a rider that the Prosecution avails all the civilian witnesses at the next hearing date so as to enable the 2<sup>nd</sup> Accused renew her bond Application.
5. A fourth application for bond was made on 12<sup>th</sup> March 2024 when the 2<sup>nd</sup> Accused argued that all the alleged vulnerable Prosecution witnesses had testified and that the Court could then consider granting her bond. In a Ruling delivered on 12<sup>th</sup> March 2024, this Court granted the 2<sup>nd</sup> Accused bond in the following terms: -
  - a. The 2<sup>nd</sup> Accused may be released on bond of One Million Kenya Shillings (Kshs. 1,000,000/=) with 2 sureties of a similar amount.
  - b. The 2<sup>nd</sup> Accused shall be released subject to a confirmation by the Defence Counsel to the Investigating Officer that the 2<sup>nd</sup> Accused has secured a different place of abode/residence other than Ruai where she is said to be a next door neighbour of the family of the deceased persons in this case.
  - c. Upon confirming the conditions in No. (b) hereinabove, the 2<sup>nd</sup> Accused is directed to report to the Officer Commanding Station in charge in the nearest Police Station to her residence once every fortnight.
  - d. The 2<sup>nd</sup> Accused is hereby prohibited from travelling outside the Court's jurisdiction (Kenya) during the pendency of this trial.
6. Counsel for the Defence later applied for a review of the said terms on 30<sup>th</sup> April 2024 while arguing that the said terms were too stringent for the 2<sup>nd</sup> Accused to meet. The Prosecution however opposed the said application and in its ruling, this Court took cognizance of the fact that Bond was not aimed at punishing an accused person and reviewed bond terms to Kshs. 250,000/= with two sureties of a similar amount, while the other conditions were to remain the same.
7. In yet another attempt to secure the 2<sup>nd</sup> Accused's release on bond, Counsel for the Accused sought a further review of the bond on 10<sup>th</sup> July 2024 so as to secure the release of the 2<sup>nd</sup> Accused on bond. This Court however reiterated the conditions stated under clause (b) of the Bond terms and directed the Defence Counsel to adhere to the same.
8. At the hearing of the instant application for a further review of the bond terms, the defence counsel argued that it had been extremely difficult for the 2<sup>nd</sup> Accused's family to raise the two sureties. He urged the Court to review the bond conditions to only one surety. The Application was vehemently opposed by Prosecution Counsel who submitted that the Court had already pronounced itself on the matter on 10<sup>th</sup> July 2024 and that the Prosecution was at the tail end of its case. He added that the 2<sup>nd</sup> Accused was likely to leave the Court's jurisdiction if she is released on bond.
9. On his part, Mr. Ochoki, holding brief for the victims' family concurred with the Prosecution Counsel and submitted that the Court had already bent backwards and reviewed the bond terms to reasonable and fair terms.
10. Bail and Bond are rights guaranteed to accused persons under the Constitution at Article 49 (1) (h) of the Constitution which provides that:-
  1. An accused person has the right ...



(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.

11. I note that this Court initially declined the 2<sup>nd</sup> Accused's Application for bail/bond on account of hostility from members of the local community where the two deceased persons hailed from. Bond was however eventually granted on 12<sup>th</sup> March 2024. It is also noteworthy, as already stated herein, that the Defence Counsel made an Application for review of the bond terms which application was allowed. This is therefore the third time that she is seeking a further review of the bond terms.
12. This court is of the view that even though bond is a constitutional right of every accused person, the said right must be balanced against the rights of the victims with the overarching principles of fairness and justice. This court is of the view that in a highly contested trial, such as the present case, this Court has been magnanimous to the 2<sup>nd</sup> Accused by not only granting her bond, but further reviewing the terms to accommodate her despite spirited opposition by the Prosecution and the reported hostility from members of the public. It is noteworthy that this Court declined to grant bond to the other 3 accused persons for several reasons including hostility from members of the public.
13. This Court concurs with Counsel watching brief for the victims' family and holds the view that it has already bent over backwards to accommodate the 2<sup>nd</sup> Accused by granting her bond and further reviewing the same to more lenient terms. The issue of compliance with bond conditions now remains in her court. It is not lost on this court that this is a serious case involving the gruesome murder of an elderly couple which means that there must be a clear balance of the competing interests when making a determination for the review of the bond terms. I find guidance in the provisions of Section 123A of the *Criminal Procedure Code* which gives the parameters for the grant of the right to bail as follows:-
  1. Subject to Article 49(1)(h) of the and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
    - a. the nature or seriousness of the offence;
    - b. the character, antecedents, associations and community ties of the accused person;
    - c. the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and
    - d. the strength of the evidence of his having committed the offence;
14. For the reasons that I have stated in this ruling, I am not persuaded that it will be in the interest of justice to allow the application to further review the bond terms. Consequently, I decline to grant the orders sought.
15. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**W. A. OKWANY**

**JUDGE**

