



**Republic v Matindo (Criminal Case E021 of 2022)
[2024] KEHC 16645 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E021 OF 2022
JL TAMAR, J
OCTOBER 23, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KELVIN MATINDO ACCUSED

RULING

1. The accused person herein is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that on 19th September 2022 at Kibiku Location within Kajiado West-Sub- County within Kajiado County Murdered Beatrice Waithera

The accused denied the charge and the matter is pending trial.
2. Bail is a constitutional right of accused persons under Article 49 (1) (h) of *the Constitution* unless there are compelling reasons not to be released. Section 123A of the Criminal procedure code sets out the considerations to be borne in mind granting or refusing Bail/Bond;

“ 123A.

- (1) Subject to Article 49(1)(h) of *the Constitution* 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 fulfillment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) should be kept in custody for his own protection.
- 3. The state through the investigating officer No 114237 PC Leken Nasoore objected to release of the accused person on Bail/Bond by filing an affidavit dated 5th December 2022. The investigating officer averred that the accused is a flight risk as he has no known fixed abode and that he is likely if released to interfere with the witnesses whose residents is known to him. A pre-bail report was filed on 24th January 2023 in which the probation officer recommends that the accused be denied bail until the crucial witnesses have testified for the reason that the accused person has no fixed abode, has weak community ties and does not frequent his rural home.
- 4. In response, the accused filed an affidavit dated 19th July 2023 and argued that it is the responsibility of the state, which it had not discharged, to establish the existence of compelling reason(s) to justify the denial of bail/bond. It is averred that the state has failed to demonstrate that there are any reasons compelling enough to deny the accused person constitutional right to be released pending trial. He averred that if released on bond, he shall stay with his parents in Mugen Location Jepto Village in Nandi County.
- 5. I have considered the application by the state and the response by the accused person. Indeed, it the responsibility of the state to prove the existence of circumstances that is so compelling as to deprive the accused right granted by *the Constitution*.
- 6. The Court of Appeal in Michael Juma Oyamo & Another V Republic, [2019] eKLR stated as follows as to what amount to compelling reason;

“..... We wish to adopt the definition of what amounts to compelling reasons as defined by the High Court in R v Joktan Malende and 3 Others Criminal Case No. 55 of 2009 as follows:

“..... The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”
- 7. The onus is on the state to demonstrate existence of compelling reasons. In this regard, the Court of Appeal in Patius Gichobi Njagi & 2 Others V Republic, [2013] eKLR, pronounced itself in the following terms:

“.... where the State opposes bail on account of any of the often-cited and commonly known fears which it routinely expresses including, but not limited to the likelihood of the



accused absconding and failing to attend trial; likelihood of interference with witnesses; the possibility of hostile and even violent reception of the accused by the community upon release, the state must do more. It must step out of the realm of imagination and speculation and provide the court with persuasive argument backed by facts and experiences, and circumstances unique to each individual case that would make the court appreciate the need to deny an applicant bail. As stated in the celebrated case of Jaffer V Republic, 1973 E.A. 39, the court cannot be called upon to speculate.”

8. The principles enunciated by the various decisions of the court has been incorporated in the Judiciary’s Bail and Bond Policy Guidelines, March 2016 which sets out judicial policy on bail and enumerates factors which courts should consider in determining applications for bond or bail which if proved would amount to compelling reasons to justify denial of bond.
9. Applying the above principles to the instant application, the question that falls for my determination is whether the prosecution has sufficiently demonstrated that there are compelling reasons in this case that justifies that derogate the right of the accused to be released on bail bearing in mind that the primary consideration in deciding whether or not to grant bond or bail is whether an accused person will turn up for his trial as and when required.
10. The court does not capriciously deny the accused the right to bail especially where there is not demonstrable reason to that. It is also the duty of this court to balance the interest of the accused person against those of the victim of the crime as well as the society at large. The right to fair trial is not a monopoly of the accused person alone. I am convinced that the accused has no fixed abode and the suggestion to live with parents in his rural home for an adult of 37 years is not persuasive enough especially considering his family’s views. The pre- bail report which provides background information on the accused person and gives an assessment on the accused suitability for bail or bond report is equally not favourable to the accused person.
11. Consequently, the court finds that there are compelling reasons to warrant denial of bail or bond for the accused person. In view of the abode priority hearing shall be given.

DATED AND DELIVERED ON THIS 23RD DAY OF OCTOBER, 2024.

JOHN T. LOLWATAN

JUDGE

