



**Republic v Ogong’o (Criminal Case E033 of 2024)  
[2024] KEHC 12582 (KLR) (Crim) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12582 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E033 OF 2024**

**K KIMONDO, J  
OCTOBER 22, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PAUL OKINYO OGONG’O ..... ACCUSED**

**RULING**

1. The accused seeks for bail pending trial. His learned counsel, Ms Achieng, first made the application on 16<sup>th</sup> June 2024.
2. The Republic opposed the application through a replying affidavit sworn by the investigating officer, Police Constable Ejikon Legiron on 29<sup>th</sup> May 2024. There is a replying affidavit sworn by counsel for the accused, Ms. Winnie Achieng, on 20<sup>th</sup> June 2024 contesting the averments by the investigating officer.
3. Both learned counsel for the accused and the State lodged written submissions. On 19<sup>th</sup> September 2024, they all informed the court that they had nothing useful to add.
4. In a synopsis, learned counsel for the accused submitted that bail is a constitutional right; and, that the accused is deemed innocent at this stage. In particular, she stated that the accused, who is a shoe vendor in Gikomba Market, has languished in custody since his arrest on 9<sup>th</sup> April 2024. She submitted that the accused was arrested in his house seven days after the homicide and that it is a contradiction to say he is a flight-risk or has threatened or interfered with any witnesses.
5. In a synopsis, learned counsel submitted that that there are no compelling reasons for denial of bail.
6. The Director of Public Prosecutions (hereafter the DPP) opposed the application. The objections are three-fold: Firstly, that the victim of the offence is the wife of the accused; and, that the key witness is



their eleven-year-old daughter. Secondly, that there are other witnesses well-known to the accused who reside at the locus in quo; and, lastly, that the security of the accused is not guaranteed.

7. I take the following view of the matter. The accused faces the grave charge of murder. The Director of Public Prosecutions informs the High Court that on the night of 23<sup>rd</sup> April 2024 at Kiambiu slums in Kamukunji Sub-County within Nairobi County he murdered Mary Waigwe Munene.
8. Those remain allegations; and the accused is presumed innocent at this moment. Under Article 49 (1) (h) of *the Constitution*, as read together with section 123 A (1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.
9. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in Republic v Joktan Mayende & 3 others, High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the Black's Law Dictionary 7<sup>th</sup> Edition. And accordingly, 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 standard set by *the Constitution*.

10. The overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic [supra]; Muraguri v Republic [1989] KLR 181; R v Fredrick Ole Leliman & 4 others, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
11. Furthermore, the Victims Protection Act 2014 now requires that the views of the victim's family be considered at this stage. In the unique circumstances of this case, the victim's family include her children.
12. There is a tacit concession that the accused's family was residing in Kiambiu slums. It would be unjust to say that merely because the accused was living in rental premises in the informal settlement he has no fixed abode or is a flight-risk. The prosecution's case seems to be that merely because the accused was arrested days after the incident, he will abscond.
13. What is more material is that the deceased was his wife. Their 11-year-old daughter, A.M. [particulars withheld], is lined up to testify at the trial. It would be simplistic to say that she will be beyond the reach or influence of the accused merely because she has recorded a statement. I have thus reached the conclusion that that the likelihood of interference with this particular witness is not far-fetched. I note further that there is another young child aged four. Accordingly, I direct the Hon Deputy Registrar to ensure that a separate Protection and Care file is opened.
14. I also note from paragraph 13 of the replying affidavit that a lynch mob attacked the accused after the incident. That is a pointer to threats on his own security but which can be mitigated by the accused's relocation. But there is no concrete plan presented to the court.
15. The court must strike a delicate balance that protects the rights of the accused but ensure that the course of justice is not frustrated. I accordingly refuse to grant bail at this stage. I direct that the motion be renewed after the above witness closes her testimony. To further secure the rights of the accused, and in the interests of justice, I direct that that this trial shall be fast-tracked.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.**



**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-  
Accused.

Ms. Achieng for the accused instructed by Achieng Ongoma & Company Advocates.

Ms. Timoi for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

