



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ndungu & another (Criminal Case E027 of 2024)
[2024] KEHC 12866 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E027 OF 2024
DO CHEPKWONY, J
OCTOBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PHARIS KURIA NDUNGU 1ST ACCUSED

CECILIA WAMBUI NYOIKE 2ND ACCUSED

RULING

1. The Accused persons Pharis Kuria Ndungu and Cecilia Wambui Nyoike are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya. The particulars of offence are that:-

“On 28th July, 2024 at Karabaini Area , Kiambu East Sub County within Kiambu County the accused jointly murdered Didier Murimi”.
2. On 2nd September, 2024, the Accused persons were arraigned in court for the same and having been confirmed mentally fit to plead, they entered a plea of ‘Not Guilty’ on 16th September, 2024.
3. Their counsel, Mr. Khalwale then urged the court to grant them release on lenient bail and bond terms given that they are young Kenyans who recently acquired their national identity cards, come from humble backgrounds and undertake to attend court as and when they will be required to. He went on to state that the incident occurred when they were at a party (*bash*) and that the deceased was their friend. He urged the court to grant the accused persons lenient bail terms since they will not abscond the court.
4. In response, the State through M/S Ndeda, equally acknowledged that the accused persons are young aged 25 years or below and students of Kiambu Polytechnic and have been in custody since 29th July,



2024. She stated that a social inquiry should be conducted to establish to determine the circumstances of the family and community's sentiments on the matter.
5. The court to call for a social inquiry to be conducted on the accused persons, the Bail Information Report for each accused person were both filed on 14th October, 2024, wherein the Probation Officer analysed the accused's family circumstances, their personal circumstances, use of drugs and substances if at all, previous adherence to bond/license terms, seriousness of the offence, victim's concerns, community views, bail sureties in coming up with the respective conclusions and recommendations.
 6. For the 1st Accused person, the Probation Officer reported he is 23 year old man, a student of Electrical Engineering at KIST who was raised in a dysfunctional family since his father remarried and his mother is currently working as a beautician in South Sudan. That for this reason, the 1st accused person is currently under the guardianship of his uncle, Nicholas and aunt, Alice Njoki. That the 1st accused person prays for lenient terms so that he can complete his studies. He promises to abide by the terms that will be set by court. It is also reported that his uncle is willing to stand as his surety while his aunt will be his contact person. It is further reported that the area administrator in Kikuyu knows the 1st Accused person together with his uncle and aunt and confirmed that the 1st Accused does not have any criminal behaviours. On the part of the deceased's family, it is reported that they are still bitter with the loss of their kin and hence the release of the 1st accused person on bail as they believe that he may tamper with the investigations. In view of all these findings on the 1st accused, the Probation Officer has recommended that the court can grant the 1st Accused person release on bond terms but put into consideration the sentiments of the victim's family.
 7. On the 2nd Accused person, the Probation Officer reports that she is a 23 year old student at Petanns College and the co-accused is her boyfriend while the victim was their mutual friend. It is said that her family has been supportive and urge the court to grant her release on lenient bail terms. According to the probation Officer, the 2nd accused person's aunt Milcah Wambui is willing to stand as her surety and deposit her title deed to act as security while her father will be the contact person. Also reported is that the community in Muranga do not oppose her release on bond terms as she does not have any criminal history and that her family is well known in the area. However, the victim's family is opposed to her release as they are fearful that she might compromise the investigation by interfering with the witnesses. The Probation Officer has recommended that the court may grant the 2nd Accused person stringent bond terms but put into consideration the sentiments of the victim's family.

Analysis and Determination

8. To determine whether or not to release the accused persons on bond/bail, I have taken into consideration their submissions and report and recommendations by the Probation Officer on each accused person.
9. It is trite that the right to Bail and bond is provided for under Article 49(1)(h) of the Constitution. It states that: -

“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.”



10. In according an accused this right, the court should consider if the reasons tendered are compelling enough to warrant the denial of bail and bond terms. The Court in the case of *Republic v Joseph Thiongo Waweru & 17 Others* [2017] eKLR defined ‘compelling reasons’ as follows:-

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

11. There are also various factors which ought to be considered in bail and bond application and these are provided for under Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, to include:-

- (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 fulfilment 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.

12. In this case, having considered the oral application made by the accused person’s counsel and the findings and recommendations in the Pre-bail Reports in respect of each accused, the court finds there is no evidence or information to court to demonstrate how and why the accused persons will interfere with the witnesses or investigations as feared by the victim’s family. Instead from the findings of the Probation Officer on each accused, it has been shown that they each have supportive families that are willing to support and ensure they attend court whenever they are required to. It has also been confirmed that the communities from which they each hail are positive towards them.

13. In the circumstances, the court proceeds to allow the application for the accuseds to be released on bond on the following terms:-

- a. Each accused may be released on a bond of Kshs.500,000/= with one surety of a similar account; or,
- b. In the alternative, each accused may be released on cash bail of Kshs.300,000/=.
- c. Each accused to provide particulars of a contact person.



- d. Each accused to attend court as and whenever they will be required to.
- e. Failure to abide by order No.(d) will render the bond terms to be cancelled and accuseds to be remanded in custody.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 18TH DAY OF OCTOBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Ndeda counsel for the State

Mr. Ochieng holding brief for Mr. Khalwale for the accused persons

Accused persons - present

Court Assistant – Martin

