



**Republic v Kimata (Criminal Case E008 of 2024)
[2024] KEHC 12784 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E008 OF 2024
RB NGETICH, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL MACHARIA KIMATA ACCUSED

RULING

1. The accused Samuel Macharia Kimata has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused person on the 14th day of August, 2024 at Timboroa area in Koibatek Sub- County within Baringo County, murdered baby SWM.
2. On the 16th September,2024, the charge and its full particulars were read over to the accused person who denied and a plea of not guilty was entered. The prosecution opposed the accused person being released on bond until the mother of the deceased testifies on ground that he may interfere with witnesses and he may harm the mother of the deceased who is the accused’s wife. They undertook to file an affidavit within 7 days.
3. The supporting affidavit sworn by PC Noah Serem was filed on the 19th September, 2024. The deponent avers that he is the investigator attached at DCI Koibatek and that the offence is alleged that the accused committed the offence following a disagreement with the mother of the deceased baby whom they were living together as husband and wife; that the accused further threatened to kill the mother of the deceased baby.
4. The investigating officer further aver that the witnesses’ area of residence is within the accused’s area of jurisdiction and if the accused is released, he is likely to intimidate, threaten or otherwise interfere with the witnesses and for the sake of preservation of evidence, it is prudent and desirable for the accused’s right to bail/bond be suspended until the mother to the deceased has adduced evidence in court.



5. He further states that the members of the public are angered by the deceased's death and if the accused is released, his safety will be at risk as he may be attacked by irate members of the public who are baying for his blood.
6. The defence counsel Mr. Mwaita in response informed the court that he had just received the affidavit by the investigations officer via WhatsApp and because of the short time, he is unable to file a reply. He requested to be allowed to respond orally. He submitted that from the supporting affidavit, the investigations officer has raised 2 issues. one is that is the accused if released on bond and he comes from Timboroa where the mother of the deceased child is, he is likely to interfere with the witnesses and submitted that the accused has no intentions of going back to Timboroa as he has residence in Naivasha and has a brother in Naivasha. That he can also stay in Kitale where his parents are or in Nanyuki where his uncle works. secondly, he has no intention of interfering with the witnesses at all as he is someone who went to school and for that matter a graduate who understands the consequences of interfering with witnesses.
7. He further submitted that in respect to the ground that this issue is still fresh in Timboroa and accused may be harmed, the accused is not going back to Timboroa and he has brother who are willing to stand surety for him. Further that the supporting affidavit has not indicated that he is a flight risk and the accused undertakes to abide by all the conditions even if he will be required to report to police. That in the event he will be denied bond, they pray that this case be fast tracked and the witnesses they allege he will interfere with to testify first.
8. In a rejoinder, the prosecution counsel Ms. Omari submitted that there is still fear that the accused may interfere with witnesses especially the mother of the deceased considering that the mother was the target, she left the child and the child was killed. She stated that the mother of the deceased had been subjected to attacks before and she had been threatened to be killed before and in fact she was the target and she managed to escape. She stated that she undertakes to avail the prosecution witnesses in the shortest time possible so as to enable the court to balance between the rights of the accused and that of the victims.

Determination

9. Bail is a constitutional right of every citizen. Article 49(1)(h) of the [Constitution](#) is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested person has the right ... 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. Moreover, by dint of Article 50(2) of the [Constitution](#), every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.
11. Accordingly, Section 123A of the [Criminal Procedure Code](#), Chapter 75 of the Laws of Kenya, stipulates that:



- (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. And, in the *Bail and Bond Policy Guidelines*, it is restated as a general guideline in Paragraph 4.9 that:
- “In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the *Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
13. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:
- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - (b) The strength of the prosecution case.
 - (c) The character and antecedents of the accused person.
 - (d) The failure of the accused person to observe bail or bond terms.
 - (e) The likelihood of interfering with witnesses.
 - (f) The need to protect the victim or victims of the crime.
 - (g) The relationship between the accused person and the potential witnesses.
 - (h) The best interest of child offenders.
 - (i) The accused person is a flight risk.
 - (j) Whether the accused person is gainfully employed.
 - (k) Public order, peace and security.
 - (l) Protection of the accused persons.
14. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records,



the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.

15. The victim herein is the accused's child and the key witness is the mother of the child who is alleged to have been threatened by the accused. The accused's life may not be at risk due to the fact that defence counsel has indicated he will relocate from Timboroa to either stay with his parents in Kitale or his brother in Naivasha but in respect to interference that cannot be ruled out. In my view, it will be safe to consider bond after the deceased child's mother has testified.
16. From the foregoing, I find that it is not appropriate to release the accused persons on bond at this stage of trial.
17. Final orders: -
 1. Application for bond is rejected.
 2. Applicant may renew bond application after the deceased's mother has testified.
 3. Hearing to proceed on priority basis.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17TH DAY OF OCTOBER 2024.

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RACHEL NGETICH
JUDGE

In the presence of:

Karanja – Court Assistant.

Ms. Omari for State.

Mr. Mwaita for accused.

