



**Republic v Oduor alias Odos Holder (Criminal Case 18 of 2023)
[2024] KEHC 12480 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12480 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 18 OF 2023
DR KAVEDZA, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KEVIN OKETCH ODUOR ALIAS ODOS HOLDER ACCUSED

RULING

1. The accused has been charged with the offence of murder contrary to section 203 as read with 204 ([Cap 63](#)) Laws of Kenya. The particulars of the offence are that on 13th February 2022 within Kianda area in Kibra Sub County, within Nairobi County murdered Henry Odhiambo Onyango. The accused sought to be admitted to bail pending trial *vide* a notice of motion dated 25th April 2024.
2. The averments made in support of the application are that the accused will not interfere with prosecution witnesses. He has a fixed abode and is not a flight risk. He will avail himself to court when required. His security is not at risk and undertakes to abide by the conditions set by the court.
3. The application was opposed through an affidavit dated 4th October 2023 sworn by CPL Michael Mboya. The averments made are that the accused assaulted and killed the victim. After the incident, the accused fled the scene and absconded from his last known abode and switched off his phone. He was only arrested by members of the public on 4th August 2023, one year and six months after the incident. Finally, that the accused has no known fixed abode and is a flight risk.
4. In the supplementary affidavit dated 20th May 2024 sworn by Ms. Osoro learned counsel for the accused, it was averred that the accused fled his home because he learnt that a group known as ‘mayouth wa olympic’ were looking for him. The had been incited to execute mob justice. He fled his rural home in Homabay in fear for his life. That before his arrest, the threat had subsided and he had resumed work as a tour guide in Kibra. In addition, he has a fixed abode in Bombolulu area within Kibra Sub-County.



5. The application was canvassed by written submissions. The accused submitted that the right to bail should only be restricted in the presence of compelling reasons. He further contended that the prosecution, in their affidavit, failed to furnish compelling reasons for denying bail or bond. He insisted that the allegations made by the prosecution were baseless and unsupported by evidence. They implored the court to grant him reasonable terms for bail or bond.
6. The prosecution argued that the accused safety was at risk and there was need for their detention pending the hearing and determination of his case. Ultimately, it was asserted that detaining the accused pending the hearing and determination of his trial is necessary for his safety.
7. Having considered the application, the response thereto, the written submissions and the applicable law, the issue for determination is whether there are compelling reasons to deny the accused reasonable bail/bond terms.
8. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
9. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfillment of obligations under previous grant of bail;
 - (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 if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
10. The constitution specifically requires under Article 49 (h) that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons why the accused should not be released on bail.
11. The investigating officer, CPL Mboya, opposed the application for bail/bond by claiming that the accused was a flight risk who lacked a fixed abode. In addition, he was on the run for one and a half



years after the commission of the offence. He maintained that this was a compelling reason for the denial of bail pending trial.

12. On his part, the accused did not dispute the averment that he was on the run. He attributed that this was for his own safety since a group known as 'mayouth wa olympic' were after him. He however maintained that they no longer posed a threat to him.
13. This court called for a pre-bail report which has been duly considered.
14. The pre-bail report on record, indicated that the accused has had a disruptive childhood. He moved from home to home due to interpersonal conflicts with his family and subsequently tried to make a life for himself. After the alleged, he fled from his home where he was taking care of his wife and two children. Even they, did not know his whereabouts for the period he was on the run.
15. The victims of the crime and member of the community are opposed to his release on bail/bond. Despite the passage of time, the matter is still fresh and there is an outcry from the community due to gravity of the issue and tempers are yet to cool down. The family of the deceased appeared highly traumatized by what transpired and would like the judicial process to determine the issue.
16. From record, the pre-bail report is clear that the accused does not have a fixed abode and is a flight risk. Security concerns were also cited and the community is unwelcoming to the accused being released on bail. The impression that the court gets from the probation report is that the accused may very well suffer harm from the community and there is no way of reaching him if he absconds. Accordingly, these are compelling reasons for the denial of bail pending trial.
17. Accordingly, the accused application for bail is dismissed. The accused case will as far as possible be fast tracked since the accused will until further orders of this court be remanded in custody pending his trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER 2024

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Osoro for the Accused

Achode Court Assistant

