



**Republic v Peter (Criminal Case E014 of 2024)  
[2024] KEHC 12492 (KLR) (Crim) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12492 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E014 OF 2024  
LN MUTENDE, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMSON NZIOKI PETER ..... ACCUSED**

**RULING**

1. Samson Nzioki Peter, the accused, was arraigned following allegations of having murdered Faith Ndinda (deceased) on 4<sup>th</sup> June, 2018, at Embakasi within Nairobi County. This was in contravention of Section 203 as read with Section 204 of the Penal Code.
2. Having denied the information presented by the Director of Public Prosecutions on behalf of the State, the accused seeks to be released on bail/bond pending trial.
3. It is urged that following the incident that resulted into the death of the deceased, the accused was charged in Makadara Law Courts in Criminal Case No. 1285 of 2018 with the offence of manslaughter and was released on bond of Ksh. 500,000/- with a surety. That he attended court faithfully and when the manslaughter charge was withdrawn, he was aware he would face a charge of murder but he did not flee. That he is not a risk to the family of the deceased as he does not stay near them.
4. The application is opposed by the State through No. 53661 Corp[oral. Edward Indече who depones that the accused threatened to stab witnesses who rescued the deceased from him who later died in hospital while undergoing treatment; and; the witnesses have expressed fear for their lives especially the one who was in a romantic relationship with the deceased who has interacted with the accused who threatened him in broad day light.



5. That the accused has no known place of work/business/abode and he is a flight risk who fled after the act only to be caught by members of public.
6. That the accused faces a serious offence with a possibility of a death penalty being meted out if found guilty which is an incentive for him to abscond if released on bond.
7. Following directions of the court parties were to file submissions, but, only the accused complied. It is submitted that the accused attended court since 2018 and all adjournments before the Makadara Court were occasioned by the desire to have murder charges preferred against the accused, yet, he did not abscond.
8. That for the last six (6) years the matter has been in court, there has been no complaint of interference with witnesses. That the State has not shown any possibility of there being any relationship between the accused and witnesses that would warrant fear of interference.
9. That the accused has a home at Kyondoni – Machakos County and also lives in Nairobi. He does not live near the victims family hence not a danger to them and has not been a safety risk to them for the six (6) years that he has been out on bond.
10. To capture views of the victims, a social inquiry was carried out by the Probation and After Care Services that filed a Pre-bail report. The secondary victims represented by the father and brother of the deceased though psychologically and economically struggling are not opposed to the accused being released on bail. They stated that he should not be subjected to pre-trial detention.
11. The community views obtained from the Chief of Kyondoni, Ruth, described the accused as of good antecedents who lived with neighbours and friends harmoniously. That one of the neighbours Mr. Mulwa Tula was ready to use his Title deed to bail him out. It is recommended that the accused who enjoys social support by the community be considered for a reasonable bond.
12. I have considered the application, the response thereto, submissions filed and the pre-trial report. An accused person retains all rights enshrined in *the Constitution*. The accused is presumed innocent until proven otherwise. It is for this reason that an accused should not be deprived of liberty by being subjected to pre-trial detention.
13. Article 49 (1) (h) of *the Constitution* upholds the right of the accused to bail/bond unless circumstances amounting to compelling reasons exist requiring the accused to be incarcerated pending trial.
14. Compelling reasons were stated in *Joktan Mayende & 3 Others [2012] Eklr* thus;
 

“...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*.”.
15. The exception to the right to bail is provided for in Section 123 A of the Criminal Procedure Code that provides thus:
 

Joinder of two or more accused in one charge or information (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.
16. The Prosecution (State) is expected to demonstrate existence of compelling reasons that would justify denial of an accused person bail. The basis of opposing bail is;
- a. The severe sentence to be meted out in event of a conviction.
  - (b) The likelihood of interference with witnesses.
  - (c) The accused is a flight risk.
17. Indubitably, the accused faces a serious offence and if found guilty the punishment to be meted out is serious. This could be an incentive for the accused to flee. However, it has been established that the accused was out on bail facing a charge of manslaughter in respect of this matter and he religiously turned up for trial. What is paramount is whether the accused will turn up for trial and if he previously demonstrated that he is capable of turning up for trial, then the law should be complied with.
18. On the question of interfering with the witnesses, The secondary victims support the accused release on bond. They have no complaint whatsoever.
19. The upshot of the above is that the prosecution has failed to demonstrate existence of convincing reasons requiring the accused to be denied bail. Therefore, the accused may be released on bond of Kenya Shillings Seven Hundred Thousand (Ksh. 700,000/-) with a surety in an even sum.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**

**L. N. MUTENDE**

**JUDGE**

