



**Republic v Mwarani (Criminal Case E003 of 2024)
[2024] KEHC 12554 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E003 OF 2024
AK NDUNG’U, J
OCTOBER 16, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

JAMES MAINA MWARANI ACCUSED

RULING

1. James Maina Mwarani the accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 14th February, 2024 at Wagutheru Village in Matanya Location of Laikipia – Central Sub-County within Laikipia County murdered David Ndirangu Wahome.
2. He has since pleaded not guilty and the matter is pending hearing. Meanwhile, the state has vide an affidavit sworn on the 18th March 2024 by Police Constable Kipchumba Koros opposed the release of the Accused on bond. The reasons cited are listed as;
 - a) That the accused is likely to interfere with witnesses who are well known to him if he is released on bail.
 - b) I pray that the accused person be denied bail as he is likely to be harmed by members of the public particularly from the area where they murdered the deceased.
 - c) That the processing endeavor to avail witnesses in good time so that this matter is heard and determined without unreasonable delay.
3. In a replying affidavit, the accused has averred that the allegations in the affidavit opposing bail are unsubstantiated and no evidence has been adduced in support thereof. He states that bail is a constitutional right.
4. A bail information report was prepared and filed in court by the Principal Probation Officer Laikipia.



5. I have considered the opposition to bail and the rejoinder thereto. I have put into account submissions by learned counsel on record. The court has also had the advantage of perusing the Bail Information Report.
6. Article 49(1)(h) of *the Constitution* bail is a right to an accused person unless there are compelling reasons to warrant denial of the same. Compelling reasons are not defined in *the constitution* but it must mean satisfactory reasons that would militate against the grant of bail, either because the accused's circumstances are such that he likely to abscond or in circumstances that would render the accused vulnerable and his safety exposed to danger from the community arising from possibility of reprisals. See a) to g) accused submission.
7. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p. 25 which sets out judicial policy on bail as follows:
The following procedures should apply to the bail hearing:
 - (a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - a. That the accused person is likely to fail to attend court proceedings;
Or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence;
Or
 - c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances;
or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public;
Or
 - e. That the accused person is likely to interfere with witnesses or evidence; Or
 - f. That the accused person is likely to endanger national security;
Or
 - g. That it is in the public interest to detain the accused person in custody.
8. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail. What the compelling reasons are, however, depend on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. The mere fact therefore that the offence with which an accused is charged carries a serious sentence is however not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will



be able to attend the trial and whether or not the a free and fair trial can be achieved notwithstanding the release of the accused on bond.

9. I associate myself with the view expressed by Muriithi, J in Kelly Kases Bunjika vs. Republic [2017] eKLR that:

“It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused person is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his “constitutional right to be granted Bond/Bail on reasonable and favourable terms.”

10. In determining whether or not a free and fair trial is possible the Court ought to take into account the circumstances of the accused as well as that of the potential witnesses. However, since the release on bond or bail is a constitutional right, it is upon the prosecution to satisfy the Court why a free and fair trial is not possible if the accused is so released.
11. On the material before me I note that the environment in the place the accused hails from is highly toxic against the accused the community still holding a serious grudge against him for killing a community leader and the chances of reprisal attacks are real.
12. Secondly, the accused has a history of frequent travels sometimes living for long periods with relatives in Daiga, Nairobi, and Londiani. In those circumstances a question arises as to whether he has a fixed abode and it becomes difficult to guarantee his attendance for trial.
13. Lastly, from the report from the victims, the accused is likely to interfere with witnesses.
14. On the whole, am persuaded that there exists compelling reasons to deny the accused bail. Bail is declined. The registrar of this court, the DPP and defence counsel are called upon to cooperate to facilitate an expedited trial. The matter shall be heard on priority.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF OCTOBER, 2024.

A.K. NDUNG’U

JUDGE

