



**Republic v Mukche & another (Criminal Case E009 of 2024)  
[2024] KEHC 14801 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14801 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ITEN  
CRIMINAL CASE E009 OF 2024  
JRA WANANDA, J  
OCTOBER 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ROBERT KIPLIMO MUKCHE ..... 1<sup>ST</sup> ACCUSED**

**ALEX KIPTOO KIPKOECH ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Before the Court is an oral Application for bail.
2. The accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 6/04/2024 at HZ area of Keiyo South sub-County within Elgeyo Marakwet County, they murdered one Martin Makori.
3. The accused were arraigned before the Deputy Registrar on 24/06/2024 before eventually taking plea on 9/07/2024. They both denied the charge and respective pleas of not guilty were entered for each. The defence, comprising of Mr. Kibii and Mr. Kiplagat, Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> accused, respectively, then applied for release of the accused on bail/bond. I directed that pre-bail Reports be prepared and filed before I could make a decision.
4. The respective pre-bail Reports were then filed as directed, both dated 29/07/2024 but bearing the Court stamp of 25/07/2024 as the date of filing. Be that as it may, although the Reports acknowledged that the family of the deceased was opposed to release of the accused persons on bail/bond, they nevertheless found that there were no compelling reasons for denying the same. The Reports therefore recommended grant of bail/bond.
5. On his part, Prosecution Counsel, Mr. Kirui did not oppose release of the accused persons on bail/bond but drew the Court’s attention to the letter dated 15/07/2024 received from the family of the



deceased, authored by the mother, and which opposed release of the accused persons. The grounds advanced were basically that the family was yet to recover from the pain of their son's killing, that the manner in which the killing was executed was heinous and/or inhumane, that there is risk of the accused persons interfering with and threatening witnesses, that the family has in fact been receiving such threats and that there is fear of the safety of members of the family of the deceased. It was also urged that the neighbourhood and the community is still in pain as regards the killing and if released, the accused persons "might not live to suffer the fate of this trial" and that release of the accused persons will be "tantamount to being an insult to the bereaved".

### Determination

6. Evidently, the issue that arises for determination is whether there are justifiable grounds for denying bail to the accused persons.
7. In regard thereto, it is not in dispute that under Article 50(2) of *the Constitution*, every accused person is presumed innocent until the contrary is proved. In relation thereto, the right to bond or bail is recognized under Article 49(1)(h) which provides that every accused 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".

8. Regarding what amounts to "compelling reasons", the Court of Appeal, in the case of Republic v Nuseiba Mohammed Haji Osman [2018] eKLR stated as follows:

We stress the key words "unless there are compelling reasons" and adopt the definition of what amounts to compelling reasons in the High court decision of R V Joktan Mayende & 3 Others, Criminal Case 55 of 2009 as follows:

"...And accordingly, 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 standard set by *the Constitution*."

9. From the foregoing, it is evident that the right of an accused person to be released on bail is a balance between the rights of the accused person and the interest of justice, law and order including factoring in the interest of the victim, or in a case of murder, his family (see Supreme Court decision in *Waititu v Republic (Petition 2 of 2020)* [2021] KESC 11 (KLR) (22 October 2021) (Judgment)).
10. As was correctly observed in the said case of Republic v Nuseiba Mohammed Haji Osman (supra), the liberty of every person is sacrosanct and being presumed innocent until proved guilty is a constitutional principle that is intended to keep intact the general fabric of the accused person's life. On the other hand, the State has a constitutional duty to prosecute those who commit crimes, to ensure public safety between the time of arrest and trial of an accused person, and to protect the integrity of the criminal justice system. In the course of realizing these goals, the individual right to liberty may be qualified. The Court then added as follows:

"It follows that where there is sufficient and compelling evidence that an accused person may undermine the integrity of the criminal justice system, by, for example, intimidating witnesses or interfering with the evidence, or fleeing the jurisdiction of the court, or by posing a danger to himself or to any other individual or to the public at large if released, then



there will be justification to either deny such an accused person bail, or set stringent bail or bond terms in the interests of justice.

11. The above principles are also captured in Section 123A of the Criminal Procedure Code and the Judiciary Bail and Bond Policy Guidelines.
12. In this instant case, the family of the deceased strongly insists that the accused should continue being confined in custody until conclusion of the trial. Needless to state, the views of the family of the deceased, as bitter or aggrieved as the family may still understandably be for the loss of their loved one, would not “tie the hands” of this Court in making an independent decision devoid of emotions since the accused are, as aforesaid, presumed innocent until proved otherwise.
13. Having considered this matter in totality, I am not satisfied that there has been demonstration of the existence of sufficient and/or compelling evidence that the accused persons may intimidate witnesses or interfere with the evidence, or that they are a flight risk. It has also not been denied that their fixed abodes are well-known. Although the mother of the deceased has indicated that the family has been receiving threats in relation to the case, this claim has not been substantiated and neither is there even an allegation that the threats has been reported to the police to for investigations. The same can also be said of the allegation that the community may harm the accused, if released. No evidence was adduced. In any case, the pre-sentence Report indicates that no hostility on the ground or threat of retaliation has been detected as the concerned families are not even known to each other, live far away apart and the chances of any interaction between them are minimal.
14. It is also relevant to note that the Report relating to the 1st accused person indicates that he is married to 2 wives, and has several children enrolled in various universities, colleges and schools, both primary and secondary. He is also said to own a matatu and a shop and is the family breadwinner. Regarding the 2nd Petitioner, he is indicated to have finalized his secondary school education last year (2023) and secured admission at one of the campuses of the Kenya Medical Training College where he is expected to report in the course of this month of September 2024. I am therefore satisfied that the accused persons have sufficient interests to protect within the Court’s jurisdiction and should not therefore be readily categorized as flight risks. I also consider that the accused persons have been in custody for about 3 months now and also that the Prosecution has no objection to their release on bail/bond. I will, in the circumstances, admit them to bond.
15. I however also consider that the accused persons circumstances in life are different. While the 1st accused is a 35-years old well-grounded businessman with 2 wives, substantial property and a big family, the 2nd accused is a young 25 years old who has just finished school and is hoping to join a nursing school in a few days. His father is deceased and his mother is a peasant farmer. He also still has school going younger siblings. It will not therefore be fair to impose upon the accused persons uniform bond terms.
16. Trying as much as possible to balance the competing interests set out above, I admit the accused persons to bond on terms as follows:
  - i. Regarding the 1<sup>st</sup> accused, Robert Kiplimo Mukche, he shall be released on a bond of Kenya Shillings Four Hundred Thousand (Kshs 400,000/-) with two sureties of a similar amount.
  - ii. As for the 2<sup>nd</sup> accused, Alex Kiptoo Kipkoech, he shall be released on a bond of Kenya Shillings One Hundred & Fifty Thousand (Kshs 150,000/-) with one surety of a similar amount with an alternative cash bail of Kshs 200,000/-.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> DAY OF OCTOBER 2024**



.....

**WANANDA J.R. ANURO**

**JUDGE**

Delivered in the presence of:

Kirui for the State

Both 1<sup>st</sup> Accused and 2<sup>nd</sup> Accused present (virtually from Iten Law Courts)

Kibii for 1<sup>st</sup> Accused

Court Assistant: Brian Kimathi

