



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Kinoti (Criminal Case E062 of 2022)
[2024] KEHC 14608 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E062 OF 2022
EM MURIITHI, J
NOVEMBER 21, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JULIUS KINOTI ACCUSED

RULING

1. The accused seeks an order reinstating his bail, which was cancelled upon a warrant of arrest issued on 1/2/2024 when the accused failed to attend court. The accused initially sought to reinstate his bail by a letter dated 13/5/2024, the accused's counsel, Mr. Steve Muriira, gave the reason for the default of the accused attending

“that the accused had been out on bond but 1/2/2024 when he came to court but the matter [was] mentioned in his absence while outside [and] warrant of arrest were issued, and “that the matter was then scheduled for 3/4/2024 and the accused came and was arrested in execution of the warrants of arrest of 1/2/2024.”

2. The reinstatement of bail was opposed by the DPP, and the Court set the matter for hearing and directed the accused's counsel to file a formal application for hearing on 22/10/2022. The accused filed an application dated 2/10/2024, and at paragraph 3 of the Supporting Affidavit the accused deponed that:-

“3. That failure to attend court was out of misconception that since I had an advocate on record, my attendance was not necessary and the only time I would be required to attend court was during the hearing of the case.”

The accused also urged that he was elderly and he was suffering in Prison.



3. The DPP filed a Replying Affidavit sworn on 18/10/2024 by Principal Prosecution Counsel Mr. Masila, and the Probation Officer Isika E.M. filed a pre-bail report dated 22/10/2024, urging that the accused's bail was granted upon clear conditions to attend court at all times.
4. The victim's family filed a replying affidavit sworn on 24/10/2024 by the deceased's daughter, Alfine Wawira, opposing the reinstatement of bail, urging that as the accused's co-suspect who was his son was still at large, his "release would prejudice this matter and this man may defeat the cause of justice in this case."
5. The Probation Officer while not opposing reinstatement of bail urged enhanced terms as follows:

"Conclusion

The accused person before the court is 56 years old. He is a form one dropout and depends on farming at his five acre of inherited family land to earn a living. The accused is married but the marriage has been described as one marked with frequent separations due to the accused's conduct.

The accused was granted bond in this matter but failed to appear in court due to what he described as a farm emergency where his cow was delivering a calf on the night prior to his court mention. The accused's friend Stanley Kiogora who secured his release using his title deed expressed willingness to continue standing as surety. The accused's wife and son seemed indifferent this fate.

Recommendation

Your Lordship, the accused did not give compelling reason to explain his failure to attend court. Social enquiries that were conducted did not portray him positively and he seems to lack a stable family structure to assist him in meeting set bond terms. In view of the above, we are of the opinion that the accused current bond terms should be enhanced to ensure he attends court as instructed.

Isika E. M.

Probation Officer, Meru."

6. The record of the court shows that the accused failed to attend court on 1/2/2024 and a warrant of arrest was issued and the matter fixed for directions on 3/4/2024. On this day 3/4/2024, obviously having learnt of the warrant of arrest, the accused came to court and was promptly detained by order of the court. After several mentions when Counsel for the accused did not attend, on 1/10/2024, Counsel applied for reinstatement of bail, and the Court then set the hearing of bail application for 22/10/2024 and directed the applicant to file and serve a formal application for review of bail with notice to the DPP, and directed the Probation Officer to file a pre-bail report on the accused.
7. The Court notes that the accused gives three different account versions of his failure to attend the court on the date the warrant of arrest was issued. One, as stated by his counsel that the accused had come to court but his matter was called out while he was outside the court; two, as set out in the supporting affidavit attached to the Motion that he failed to come because he was labouring under a misconception that he was not required to attend court when represented by Counsel, save for hearings; and three, that he had a farm emergency when his cow delivered on the eve of his court appearance. No explanation was given why he did not come to court on the 2/2/2024 following the farm emergency and only came to court on the adjourned date two months later on 3/4/2024.



8. The Court must grant bail where the prosecution cannot show any compelling reason for denial of bail. However, as urged by the DPP, where the accused has shown himself incapable of complying with terms of bail, there is compelling reason in the fact that the accused may not attend court for his trial. There is, further, aggravating circumstances in this case as the accused has given three different and inconsistent reasons for his failure to attend court, indicating his untruthful nature which then marks him as a likely flight risk. Moreover, generally, the court shall not exercise discretion in favour of an untruthful applicant.

Orders

9. Accordingly, for the reason set out above, the applicant's application for the reinstatement of bail is declined. The surety is discharged and the security shall be returned to the depositor.

Order accordingly

DATED AND DELIVERED THIS 21ST DAY OF NOVEMBER, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Masila for DPP.

Mr. Steve Muriira & Mr. Muthomi Mugiira for the Accused.

Mr. Mungania for the Victim's family.

