



**Republic v Okongo (Criminal Case 52 of 2023)
[2024] KEHC 14494 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 52 OF 2023
DR KAVEDZA, J
NOVEMBER 21, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MATHEW ARIANDA OKONGO 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 21st September 2022 at around 1530 hrs in Karen Hardy area along Bogani East road within Nairobi County murdered Mariam Auma Okongo.
2. The accused sought to be admitted to bail pending trial. The respondent through PC Emmy Chepkorir Mutai filed an affidavit dated 25th October 2024 in opposition to bond.
3. The averments made are that the victim in this case is the accused's mother whom he resided with. That if released, the accused was likely to go back to the said residence and dispose off the property without to the detriment of the family.
4. The application was canvassed by written submissions. The accused submitted that that he has an alternative home in Homabay where he will reside while attending court. 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.
5. The prosecution did not file written submissions.
6. 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.



7. 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.
8. 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.
9. 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.
10. The investigating officer, PC Chepkorir opposed the application for bail/bond by claiming that the accused if released was likely to dispose off the family home where the accused and the victim lived. That without an injunctive order, the property of the deceased was at risk. She maintained that this was a compelling reason for the denial of bail pending trial.
11. On his part the accused maintained that this was not a compelling reason and that he had an alternative home in Homabay. This court called for a pre-bail report which has been duly considered.
12. The pre-bail report on record, indicated that the accused did not provide any contacts of his relatives, which made it difficult to establish their views and those of the community on his suitability for bail and bond. The report was therefore inconclusive.
13. From the record, I note that some of the prosecution witnesses are employees and residents and/or tenants who resided in the same residence as the accused and the victim. It is not clear whether they still reside in the same premises or not. If they do, the risk of interference by the accused is very high.



14. The court must therefore, strike a perfect balance that ensures that the trial is not impeded by acts of interference with witnesses, but at the same time, upholding the rights of the accused to a fair trial (*KK v Republic* [2017] eKLR)
15. In conclusion, the court finds that a compelling reason has been established; likely interference and intimidation of witnesses owing to the circumstances under which the offence was committed. There is compelling reason to keep the accused person in custody until the key prosecution witnesses have testified. Accordingly, the accused person is denied bail. In case of a future application for bail review, it will be considered on its merit and the circumstances of the case at the relevant time.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF NOVEMBER 2024.

D. KAVEDZA

JUDGE

In the presence of:

Mburugu for the State

Nyabiro for the Accused

Achode Court Assistant

