



**Republic v Onyango (Criminal Case E012 of 2024)
[2024] KEHC 14645 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E012 OF 2024
RM MWONGO, J
NOVEMBER 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELVIS KARIUKI ONYANGO ACCUSED

RULING

1. The applicant seeks to be admitted to bail pending the hearing and determination of this case. The accused person is charged with an offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 12th April, 2024 at Kagio town, within Kirinyaga County he murdered Natasha Wanjiku Muthii.
2. On 9th May, 2024 the accused took plea and pleaded not guilty for murder. He now seeks to be admitted to bail. He is a minor aged 17 years old.

Analysis and Determination

3. The accused a minor, seeks to be granted bail pending the hearing and determination of this murder case.
4. The foundation of bail or bond in Kenya is the *Constitution*, which provides at Article 49(1)(h) as follows:

“An accused person has the right ...

- (h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”



5. The accused seeks to be released from custody on reasonable bail terms. His counsel submitted that he is a minor and a form three student. The prosecution relies on the Probation Officer's Pre-Bail Report and urges for stringent bail terms.
6. The Probation Officer's Pre-Bail Report dated 15th August, 2024 indicates that the accused is unsuitable for bail/bond terms. According to the report his family, the victim's family and the community do not advocate for his release on bail/bond at this moment. The report further indicates that his mother his willing to stay with him and enroll him to counselling sessions. He is very disturbed and should go for mental assessment before leaving custody.
7. In bail or bond applications, the primary consideration must always be the ability of the accused to attend trial. The only exception is where compelling reasons for denial of bail are demonstrated. In *Republic v Danson Mgunya & Another* [2010] eKLR Ibrahim, J (as he then was) described the right to bail as an "inalienable right" by holding that:

"The result of the foregoing is that a murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."
8. Further Article 50(2)(a) of the *Constitution* provide that an accused is presumed innocent until the contrary is proved. Even throughout a trial however damning the evidence the accused remains innocent until proven guilty by the determination of judgment of the Court.
9. There is no evidence that he is a flight risk, or will interfere with witnesses or will harm other people. There is no Affidavit by the Investigating Officer or any other person with grounds that suggest the right of bail should be denied.
10. The Probation Officer Pre-Bail Report recommends for professional counselling in order to create a conducive environment for self and family.

Disposition

11. Accordingly, the accused is granted bail/ bond on the following terms:

The accused may be released on a bond of Kshs.300,000/= with one surety of similar amount; and on the following additional conditions:

 - a) The accused shall reside with his mother Winfred Kariuki in Mlolongo.
 - b) The Accused shall attend regular counselling in such programmes as shall be determined by the Probation Officer, Kirinyaga, in liaison with the Probation Officer Mlolongo.
 - c) The Accused shall report at Mlolongo Police Station on the last day of each month and a record of such attendance shall be maintained by the officer in charge. Such record may be called upon by the Court on demand.
 - d) The Accused shall attend every court session.
 - e) Breach of any of the above condition shall result in the cancellation of bond.
12. Orders accordingly.

DELIVERED AT KERUGOYA THIS 19TH DAY OF NOVEMBER 2024

R. MWONGO



JUDGE

Delivered in the presence of:

Accused - Present in Court

Mwagiru - for Accused

Mamba - for the State

Court Assistant, Murage

