



**Republic v Kinuthia (Criminal Case E010 of 2022)
[2024] KEHC 14016 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E010 OF 2022
DO CHEPKWONY & DO CHEPKWONY, JJ
NOVEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN KIMUNYA KINUTHIA ACCUSED

RULING

1. The Accused person John Kimunya Kinuthia is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that:-

“On the 25th/26th day of February, 2022 April 2021 at Githioro village in Ting’ang’a Location, Kiambu East Sub County, the accused jointly with others not before court murdered one Onesmus Mwangi Kimunya”

2. On 21st March, 2023, the accused was arraigned before this Court and he was remanded in custody with directions that he be taken to a Psychiatrist for a mental assessment and for the Deputy Registrar of this Court to assign him Legal Representation (counsel).
3. The Accused person pleaded not guilty to the offence on 23rd March, 2022.
Through his counsel, the accused sought to be released on bail/bond terms and in a ruling delivered on 10th March, 2023 the court (Hon. Kasango, J) held that there were compelling reasons to deny the accused released on bond/bail.
4. The Accused filed Notice of Motion application dated 10th August, 2024 pursuant to Section 123 of the Criminal Procedure Code, Article 49 (1) (h) of the Constitution of Kenya seeking the following orders:-



- a. That the Honourable Court be pleased to review and set aside the orders issued by the Honourable court on the 10th March, 2022 denying the accused person cash bail or bond pending the hearing and determination of this case.
 - b. That the Honourable Court does grant the accused person favourable bail and bond terms pending the hearing and determination of this case.
 - c. That upon granting prayers (b) above, the Applicant shall abide by any conditions set by the Honourable Court.
 - d. That the costs of this application be provided for.
5. The Applicant's case is that he is sick and in need of urgent medical attention as he contracted a skin disease while in remand at the Industrial area Remand Home together with other injuries which he suffered from a Road Traffic Accident. According to the Accused person, he is not a flight risk and can be issued with favourable bail or bond terms. He also avers that he has been of good character and always adhered to court directions at the remand. The Accused also holds that he will reside at his parents homestead in Muranga and will not interfere with witnesses and or cause the Respondent to suffer any prejudice if he is released on bond/bail.
6. The Prosecution indicated that it would be relying on the Pre Bail report which the court called for and the same was filed on 7th October, 2024.

Analysis and Determination

7. In determining the application by the accused person herein, I have also read through the Supporting Affidavit thereto alongside the Pre-bail Information Report on the accused filed on 7th October, 2024. This report and recommendations therein are based on the finding by the Probation Officer which were done on inquiry of the accused family circumstances, his personal circumstances and means alongside his use of drugs and substances, previous adherence to bond/license terms, seriousness of the offence, victim's concerns and sentiments, community ties and views of the Investigating Officer together with bail sureties and securities in coming up with its conclusion and recommendations.
8. It is the Probation Officer's findings that the accused persons is 53 years old, a widower and father of five children two, who include the deceased, who is a victim in this case. It is also reported that the accused does not have a criminal history hence no records of him breaching any bond terms. The accused is also reported to have good family relationship and was described as a loving and responsible father. The local administration also said to have indicated that the accused dropped out of school due to lack of necessary support system but they do not view him as a flight risk and are thus not opposed to him being released on lenient bond terms.
9. It has further been demonstrated that the community will accept him back as he stands trial, a sentiment which was echoed by his step dad and his cousin. It has been shown his daughter, Ann Wanjiru Kimunya has committed to stand surety for him and that the family members have raised Kshs. 150,000/= which they are willing to deposit as cash bail to secure his release.
10. On the part of the victim, the deceased was aged 30 years old with no family responsibilities and was working as a casual labourer. They have also stated that the deceased was a second born child of the accused and lived in the same compound with him.



11. The Probation Officer recommended that the accused who hails from a modest background with strong family support, has pledged to fully comply with all court orders, which makes him a candidate for lenient bond/bail terms.
12. It is trite that the purpose of bail and bond is to secure the attendance of an accused person in court as and whenever he is required to in accordance to the Bail and Bond Policy Guidelines. This is restated as a general guideline in Paragraph 4.9 of the said Guidelines as follows:-

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
13. Having considered the circumstances of the case, the Bail Information Report together with the constitutional and statutory provisions, the court notes the accused has been in custody since 21st March, 2022 when he was arraigned before court. Therefore, having been denied bond terms on 10th March, 2023 and having been told that the family is unable to raise the high bond terms set by the court then, a year later this court is moved and proceeds to allow the application by the accused.
14. In the upshot, the accused may be released on bond/bail in the following terms:-
 - a. The accused may be released on a bond of Kshs.500,000.= with one surety of a similar amount; and or,
 - b. In the alternative, the accused may be released on cash bail of Kshs.200,000/=.
 - c. The accused to provide particulars of his place of abode and contact person.
 - d. The accused to attend court as and whenever he is required until the final determination of this trial.
 - e. Failure to abode by Order (d) above, with no good or justifiable reason, the bond/bail terms shall be rendered cancelled and accused remanded in custody till the determination of the trial.
 - f. Hearing on 11th February, 2025.-

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Ndeda counsel for the State

M/S Kadenge counsel for the Accused

Court Assistant - Martin

