



**Republic v Wafula alias Maxi (Criminal Case E035 of 2023)  
[2024] KEHC 14022 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E035 OF 2023  
DO CHEPKWONY, J  
NOVEMBER 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MAXWELL WAFULA ALIAS MAXI ..... ACCUSED**

**RULING**

1. The Accused person, Maxwell Wafula Alias Maxi 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 5<sup>th</sup> day of September, 2023 at around 0035hrs at Gikambura Area of Kikuyu Sub-county within Kiambu County, the accused murdered one Awny Karim Gouda Arisha.”

2. On 25<sup>th</sup> September, 2023, the accused was arraigned before this court whereby after being informed of the reason he was before court, he was remanded in custody to await an assessment of his mental capacity and be assigned counsel by the Deputy Registrar of this court.
3. On 27<sup>th</sup> September, 2023, having been assessed by a Psychiatrist and found fit to plead and having been assigned legal representation, the accused person pleaded ‘Not Guilty’ to the offence of Murder. His counsel, Mr Mulwa, then urged the court to grant him release on reasonable and favourable bail/bond terms. Ms Ngesa, Counsel for the State informed the court that according to the Investigating Officer, the offence was committed in Kiambu and the accused person was arrested in Bungoma while fleeing. She urged the court to grant them seven (7) days to file a comprehensive affidavit in opposition of the accused person being released on bail/bond terms.
4. In rejoinder, the accused person’s counsel stated that the release of the accused person on bond/bail is a constitutional right which can only be denied upon a demonstration of compelling reasons. He



argued that the accused is not a flight risk and he is a Kenyan citizen with a right to bail/bond under Article 49 of the *Constitution*. He also argued that the prosecution have not adduced any evidence to confirm that the accused person was fleeing when he was arrested in Bungoma.

5. In consideration of the arguments adduced by the prosecution and the defence counsel, on whether or not to release the accused on bond/bail, the court called for a social inquiry to be conducted on the accused and a pre-bail information report to be filed in court to assist this court in arriving at an informed decision on the issue. The pre-bail report was prepared and filed in court on 19<sup>th</sup> February, 2024.
6. According to the said pre-bail information report, it is shown that the Probation Officer inquired into the accused family's circumstances, his personal circumstances and means, alongside his abuse of drugs and substances, if at all, 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 any bail sureties and securities in coming up with its conclusion and recommendations.
7. The Probation officer indicated that the Accused person is a 26 year old person, a single man with no parental responsibility. He stated that prior to his arrest, the accused was working as a casual labourer for the victim by assisting him to load the car sell the merchandise. It is stated that during the social inquiry it was established that he was not honest since he had only worked for one week and not year. It was also revealed that he uses drugs.
8. In the same report, it is also stated that the local administration and the community in Etulu know the accused and his family but they strongly oppose his release on bond noting that the accused had developed criminal tendencies. It is reported that in Gikambura where the mother stays and works, the family was not known until the incident occurred. On the part of the victim's family, they strongly oppose the release of the accused on bond terms and hold that he should remain in custody during trial for his own safety, which are the same sentiments of the community.
9. According to the Probation Officer, it was found that nobody is willing to stand as surety for the accused for his own safety, and having taken into consideration the position of the victim's family, it was the Probation officer's recommendation that the accused person is not suitable for bond but the same could be reviewed later depending on a change in circumstances.

### **Analysis and Determination**

10. This court has considered the oral arguments by the accused person's counsel and prosecution on whether or not to release the accused on bail/bond. The court has also read through the pre-bail information report filed on 19<sup>th</sup> February, 2024.
11. It is trite that the right to Bail and bond is provided for under Article 49(1)(h) of the *Constitution* it which provides that: -  

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.'
12. From this provision, a court can only deny an accused release on bail/bond if it is shown that there exist compelling reasons sufficient enough to warrant the denial of bail and bond terms. The Court



in the case of Republic –vs- Joseph Thiongo Waweru & 17 Others [2017] eKLR, defined compelling reasons as follows:-

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

13. And for a court to grant an accused release on bond/bail, there are various factors which ought to be considered in such application as provided for under Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya. They include:-

- (1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
  - (a) the nature or seriousness of the offence;
  - (b) the character, antecedents, associations and community ties of the accused person;
  - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
  - (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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
  - (b) should be kept in custody for his own protection.

14. In this case, having considered the oral application made by the Accused person, the Affidavit by the Prosecution and the Pre Bail Information Report, this court finds that the recommendations by the Probation Officer, and which have not been rebutted by the defence, are not favourable given that same is not favourable to the accused given that the accused does not have a supportive family that is willing to stand surety for him and he is said to be a heavy alcoholic and bhang smoker, a behaviour which is likely to hinder or interfere with his compliance to bail conditions. It has also been demonstrated that the victim's family and the community are all opposed to his release, citing his criminal conduct and his own safety.

15. In conclusion, this court therefore finds that the Accused is not suitable for release on any bail and bond terms and therefore directs that the accused person Maxwell Wafula Alias Maxi, remains in remand during trial, unless there is a demonstration of change in circumstances.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**D. O. CHEPKWONY**



## **JUDGE**

### **In the Presence of:**

M/S Ndeda counsel for state – present

Mr. Mulwa counsel for accused – present

Accused – present

Court Assistant - Martin

