



**Republic v Jillo alias Kassim Jillo (Criminal Case E009 of 2024)  
[2024] KEHC 13652 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13652 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E009 OF 2024  
JN ONYIEGO, J  
NOVEMBER 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HASAN ABUBAKAR JILLO ALIAS KASSIM JILLO ..... ACCUSED**

**RULING**

1. The matter before me is a ruling on whether the accused person should be admitted to bail/bond terms pending trial. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars are that on 15.09.2024 at Adele are Madogo Location, Bangale Sub County, within Tana River County he murdered Collins Muiga Gichohi.
2. Upon being read the charge and every element thereof, the accused person pleaded not guilty thus prompting his counsel, Mr. Nyipolo to urge that he be released on bail/bond. Subsequently, the court directed that a pre-bail report be filed by the probation officer.
3. The pre-bail report dated 24.10.2024 and filed on the very date by Kyalo Dominic was not favourable. It stated that should the accused be granted bond/bail at this juncture, chances of him breaching the bond/bail terms were high. That after the alleged incident, the accused went into hiding thus taking a period of two weeks' search before he was arrested. It was averred that the community together with the accused's and the victim's family were not ready to receive him back to the society. In addition, the accused person's family further was not ready to source for means to secure his bond and therefore, they urged that his bid for bail/bond be declined.
4. Counsel urged that the accused was a family person and further, the sole bread winner of his family. That the alleged ground of hostility as described in the pre-bail report was not enough to deny the accused person bail/bond as the same was a constitutional right. Nevertheless, he urged the court to grant the accused reasonable bail/bond terms.



5. Mr. Kihara, counsel for the prosecution opposed the application arguing that the report clearly showed the position on the ground thus the accused person was not suitable for bail/bond. Counsel contended that the ground is hostile to the accused person and that it was only proper for him to remain in custody during the hearing of this case for his own security.
6. I have considered the application herein, the arguments both in support thereof and in opposition thereto as well as the oral submissions made.
7. Article 49(1)(h) of *the Constitution* provides that:-An accused person has the right to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.
8. Section 123A of the Criminal Procedure Code gives the parameters for consideration before the grant of bail as follows:(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. [ Also see Waititu vs Republic [2021] KESC 11 (KLR) and Kenyan Judiciary's Bail and Bond Policy Guidelines issued in March, 2015 at pages 16 to 19].
9. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since *the Constitution* expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail.
10. What the compelling reasons are, however, depend on the circumstances of each case. The mere fact therefore that the offence with which an accused is charged carries a serious sentence is however not necessarily a reason for denial of bail. To the contrary, the main question that the court must keep in mind is whether or not the accused will be able to attend the trial and whether or not the free and fair trial can be achieved notwithstanding the release of the accused on bond.
11. In determining whether or not a free and fair trial is possible, the Court ought to take into account the circumstances of the accused as well as that of the potential witnesses. However, since the release on bond or bail is a constitutional right, it is upon the prosecution to satisfy the Court why a free and fair trial is not possible if the accused is so released. Thus, the prosecution must satisfy the court that there exist compelling reasons which justify the denial of bail or bond. [ SeeMohamed Abdurrahman Said & Another vs Republic [2012] eKLR].
12. I have carefully considered the material before court and more specifically the pre-bail report noting that the prosecution did not swear any affidavit opposing the release of the accused. I must however state that nearly in all the cases involving murder, the probation officers' report always indicate that the society would not be pleased by the release of the accused person. This has become a common trend. It is important to note that the right to bail/bond is a constitutional right and the same thus cannot be wished away unless there are compelling reasons not to. But even for a moment, going by the averment in the pre-bail report that the society was not ready to receive the accused person back, it is my view that the police and the local authority who are charged with ensuring order and peace are within the



said locality. It is therefore their responsibility to ensure that order and peace prevail thus ensuring that everyone is safe.

13. After considering the facts of this case, I hold the view that the application has merits and I therefore admit the accused person to a bond of Kshs 1,000,000/= with one surety of similar amount.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF NOVEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

