



**Republic v Mwita (Criminal Case E007 of 2024)
[2024] KEHC 13624 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E007 OF 2024
F GIKONYO, J
NOVEMBER 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHABE JOHN MWITA ACCUSED

RULING

Bond/Bail Application

1. Ms. Kithinji, legal counsel for the accused person, orally applied for the accused person to be released on favorable bond terms.
2. Mr. Okeyo, the prosecution counsel, opposed the release of the accused on bond for the reasons that; all the prosecution witnesses are immediate neighbors of the accused and there is a likelihood of interference with the witnesses.

Directions of the court

3. The court directed the prosecution to file and serve an affidavit on compelling reasons. Once served, the defense to file their replies. Parties stated they would not file submissions.
4. The prosecution filed an affidavit opposing bond.

Analysis And Determination

Right to bail

5. Every person charged with a criminal offence has a right to be released on bond on reasonable conditions except where there is a compelling reason not to be so released. Art. 49(1)(h) of the



Constitution of Kenya, 2010. Making all offences bailable. This is premised upon the right to be presumed innocent until the contrary is proven. R. vs. Richard David Alden (2016) eKLR.

Compelling reason and burden of proof

6. The prosecution bears the onus of proving compelling reasons under Article 49(1)(h) of the Constitution- reasons that justify the limitation of the right to liberty in the context of Article 24 of the Constitution.

Objective of bail

7. Bail ensures the accused gets his liberty but also, that, he attends trial. Nevertheless, in granting bail, the court should ensure that the accused does not prejudice the trial. *Muraguri v Republic*.

Grounds for objecting bond

8. The prosecution opposed release of the accused on bond on three grounds; i) flight risk, ii) interference with witnesses, and iii) safety and security of the accused.

Security and safety of the accused.

9. The investigating officer in his affidavits has stated that the life of the accused is at risk since during the time of the arrest he was about to be subjected to mob injustice by members of the public.

Taking the law into own hands

10. This ground is disturbing and a stark reminder of the society of yore; of the Ruffians or Mahocks, whose talent was to use all manner of cruel and torturous methods to inflict as much pain as possible and to kill anyone found in their way.
11. An accused person is by law presumed innocent until proven guilty. Only a court of law determines his guilt. The community should not therefore, take the law into their hands to avenge on the accused. The law will.
12. The ground of safety or security of the accused, should never be encouraged to be a compelling reason to deny bail; lest courts should inadvertently promote or condone violence, disorder, anarchy and usurpation of law by unscrupulous individuals or group of people.
13. The state should ensure the safety and security of its citizens including the accused person. Therefore, this court finds the argument that the accused should be detained for his own safety and security to be without any legal or factual basis, and is rejected.

Flight-risk

14. In his affidavit, PC Sang Robert avers that the accused person is a flight risk; has no fixed abode and might flee to the neighboring country, Tanzania, where he has relatives.
15. Other than claiming that the accused has relatives in Tanzania, there is no real evidence that was tendered to show that the accused is likely to abscond or go into hiding. The argument is neither here nor there, and lacks evidence to give it power and grace. For these reasons, the ground is not substantiated. And is rejected by the court.



Interference with witnesses

16. The investigating officer in his affidavit states that the applicant is likely to interfere with witnesses all of whom are his neighbors.
17. Interference with witnesses is an affront to and impeaches upon the integrity of the trial. Making it a justifiable reason to limit the right to liberty. *R. vs. Patius Gichobi*, article 24 of the *Constitution*.
18. See also a work of the court in *R. vs. Jaktan Mayende & 3 others*, that:

“...In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of the right to liberty in law in an open and democratic society as a way of safeguarding the administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice, and the rule of law in general as envisioned by the people of Kenya in the Preamble to the *Constitution* of Kenya 2010.....Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give skewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”
19. The specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond. *R. vs. Dwight Sagaray & 4 others*, 2013 eKLR.
20. In the present case, the prosecution stated in their affidavit that the accused is likely to interfere with crucial witnesses who are his neighbors. The likelihood of interference of witnesses is not far-fetched as the presence of the accused in their midst, especially eye witnesses, may cause chilling feelings amongst, making the witnesses to resign to fear of unpleasant consequences. The witnesses are neighbors of the accused and there is likelihood of him interfering with the witnesses.
21. Therefore, the court finds that the prosecution has proved likelihood of interference with witnesses by the accused

Disposition

22. In the final analysis, this court finds there is compelling reason not to release the accused on bail. The accused shall remain in custody until those witnesses have testified.
23. In light thereof, the trial be fast-tracked.
24. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5TH DAY OF NOVEMBER, 2024.

F. GIKONYO M.

JUDGE

In the Presence of:

CA - Nyangaresi



M/s. Githinji for Accused – present

Okeyo for DPP - present

