



**Musembi v Republic (Criminal Case E019 of 2024)  
[2024] KEHC 16798 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16798 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE E019 OF 2024  
NIO ADAGI, J  
DECEMBER 5, 2024**

**BETWEEN**

**PETER MUSYOKA MUSEMBI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant/Accused person, Peter Musyoka Musembi is charged with the offence of Murder contrary to Section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence are that the Applicant on 28th day of July 2024 at Matuu Trading Centre, Matuu Location in Yatta Sub-County within Machakos County, murdered Owen Mutua Pauline.
2. When the Applicant was arraigned before the court on 17/10/2024 for plea taking, he denied the charge and his learned counsel Ms Katee holding brief for Mr. Musyoma, immediately made an oral application for him to be admitted to bail or bond on reasonable terms pending the hearing and determination of his case.
3. The application was not opposed by the State rather Ms Agatha, prosecutor requested that a Pre-bail report for the Applicant be availed before court for consideration. The court ordered that the probation department prepares a Pre-bail report of the Applicant.
4. The pre- bail report for the Applicant was filed in court on 13/11/2024. I have keenly considered the said report on the introduction and source of information, family back ground, personal circumstances, previous bail/bond history, attitude towards bond, ability to meet bond terms, Victim's circumstances, Community report and the conclusion by the Probation Officer.
5. I am able to gather that the Applicant has no previous history of jumping bond. Though he has a fixed place of abode at the village, he rarely lived there. No concern over witness interference was established, However, he was perceived to be a safety threat by the deceased's family and community members.



This is because of the alleged threats issued to the deceased's mother and his nature of being aggressive on provocation.

6. The Applicant is positive towards bond and promised to comply with its terms and conditions if granted to have shown positive attitude towards being granted favourable bond terms and is willing to abide by the bond terms if granted. He pleads with the court to grant him free bond since he comes from a poor background. He intends to live with his family at their rural home if granted bond.
7. The nuclear family members of the Applicant are willing to secure bond for him using the family title deed registered in their grandmother's name.
8. The victim's family was opposed to his consideration for bond citing that he was a threat to their lives.
9. In conclusion, the report recommend that the bond may be deferred until key witnesses have testified. However, the recommendation is subject to the court's discretion. This court observes that no objection has been raised by the State on the application for bond and further that no objection has been raised by the State on the application for bond. In addition, no affidavit has been filed by the Investigating Officer to identify who the key witnesses are. It is not known when the purported key witnesses are likely to testify in the case.
10. Article 49(1) (h) of *the Constitution* of Kenya provides that an arrested 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. No compelling reasons have been shown in this case.
11. The purpose of a pre-bail report is intended to inform the court circumstances that relate to the offence and guide in determining whether to release an accused person on bond and under what terms.
12. I see no reason to deny the Applicant bond. I proceed to release him on bond on conditions set out under final orders below.
13. Final Orders:
  - i. The Applicant will be released upon signing bond of Kshs.500,000/= with two contact persons which shall be approved by the Deputy Registrar of this Court.
  - ii. Once released, the Applicant shall attend the Deputy Registrar once every two months until further orders of this court and shall also attend the court on all hearing dates without fail.
  - iii. The Applicant is restrained from issuing threats or interfering in whatever manner with witnesses or Victims' family members in this case.
  - iv. Failure to comply with the above conditions shall lead to cancellation of the Applicant's bond.

It is so ordered.

**RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 5TH DECEMBER 2024**

**NOEL I. ADAGI**

**JUDGE**

**DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 5TH DECEMBER 2024**

In the presence of :

Ms Katee..... for Applicant

Ms Agatha..... for Respondent



MillyGrace..... Court Assistant

