



**Republic v Akulo (Criminal Case E027 of 2024)
[2024] KEHC 15850 (KLR) (Crim) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E027 OF 2024
K KIMONDO, J
DECEMBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KEVIN OTIENO AKULO ACCUSED

RULING

1. The accused seeks bail pending trial. His learned Counsel, Mr. Oduor, submitted that the accused is deemed innocent; and, that the right to bail is guaranteed by Article 49 (1) (h) of *the Constitution*.
2. Responding to an affidavit by the investigating officer, counsel argued that the accused is not a flight risk or likely to interfere with witnesses. He relied further on a deposition by the accused dated 28th June 2024 as well as the precedent in *Aboud Rogo & another v Republic* [2011] eKLR.
3. The application was opposed by the Republic primarily through the replying affidavit of Police Constable Collins Shivatse sworn on 22nd May 2024. Learned Prosecution counsel, Ms. Kigira, argued that the right to bail is limited by Article 24 of *the Constitution*. The justification in this case the accused was living with three eye-witnesses who including a minor and a domestic partner. Accordingly, the likelihood of interference with some witnesses is not far-fetched.
4. On 11th October 2024, I heard further arguments from both learned counsel for the accused and the Republic.
5. It is a truism that the accused is presumed innocent. Under Article 49 (1) (h) of *the Constitution*, as read together with section 123 A (1) of the *Criminal Procedure Code*, he is entitled to bail unless there be compelling circumstances.



6. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in [*Republic v Joktan Mayende & 3 others*](#), High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the Black's Law Dictionary 7th Edition. And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by [*the Constitution*](#).

7. The overarching objective of bail is to ensure the accused attends trial. See Michael Juma Oyamo & another v Republic [supra]; [*Muraguri v Republic*](#) [1989] KLR 181; [*R v Fredrick Ole Leliman & 4 others*](#), Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
8. I have kept in mind that the accused is charged with the grave offence of murder. The Director of Public Prosecutions informs the High Court that on the 2nd March 2024 at Umoja 3 area within Nairobi County, he murdered Baby Christopher Baraka.
9. Those remain allegations; and the accused is presumed innocent at this moment. Under Article 49 (1) (h) of [*the Constitution*](#), as read together with section 123 A (1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.
10. Regarding the phrase, compelling reasons, I am well guided by the decision of Gikonyo J in [*Republic v Joktan Mayende & 3 others*](#), High Court, Bungoma Criminal Case 55 of 2009 [2012] eKLR where the learned judge stated-

But more light is shed by the Black's Law Dictionary 7th Edition. And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by [*the Constitution*](#).

11. The overarching objective of bail is to ensure the accused attends trial. See [*Michael Juma Oyamo & another v Republic*](#), Court of Appeal at Nairobi, Criminal Appeal 113 of 2018 [2019] eKLR; [*Muraguri v Republic*](#) [1989] KLR 181; [*R v Fredrick Ole Leliman & 4 others*](#), Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
12. Furthermore, the [*Victims Protection Act 2014*](#) now requires that the views of the victim's family be considered at this stage. In the unique circumstances of this case, the victim's family include his step-child who is a minor. He was also living with the mother of the deceased child and a brother in law.
13. What is material is that the mother of the deceased, another minor child and brother-in-law are all lined up as witnesses. It would thus be simplistic to say that the minor or her mother would be beyond the reach or influence of the accused merely because they have recorded statements or no longer living with the accused. I have thus reached the conclusion that there is a real likelihood of interference with evidence.
14. The court must strike a delicate balance that protects the rights of the accused but ensure that the course of justice is not frustrated. I accordingly refuse to grant bail at this stage. I direct that the motion be renewed after the above three witnesses close their testimony. To further secure the rights of the accused, and in the interests of justice, I direct that that this trial shall be fast-tracked.



It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Mr. Apollo for the accused instructed by Apollo Oduor & Associates Advocates.

Ms. Tum for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

