



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mungai (Criminal Case E023 of 2020)
[2024] KEHC 15899 (KLR) (Crim) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E023 OF 2020**

K KIMONDO, J

DECEMBER 17, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

KEVIN NJOROGE MUNGAI ACCUSED

RULING

1. The accused’s notice of motion dated 16th January 2024 prays for review of the refusal of bail made by the court (Nzioka J) on 28th June 2021. One of the reasons for denial of bail then was that the “character of the accused was wanting and [he] had lost his fixed place of abode”.
2. His father and mother have now filed depositions confirming that they are willing to host their son at Githiga in Kiambu County during the remainder of the trial; and, to further undertake to that he will attend all the court sessions.
3. At the hearing of the motion, learned counsel for the accused submitted that the accused is deemed innocent and that the right to bail is guaranteed by Article 49 (1) (h) of the *Constitution*. He argued that in view of the averments by the parents of the accused, there are no compelling circumstances for denial of bail.
4. The application is contested by the Republic on the basis of the earlier affidavit sworn by the investigation officer on 30th September 2020. It is instructive that the Republic did not file a reply to the present motion. The oral objections by learned prosecution counsel are three-pronged: Firstly, that the accused remains a flight-risk; secondly, that some accomplices remain at large; and, thirdly, that the parents of the accused have little or no control over their adult son. In a nut-shell, counsel argued that the circumstances have not changed and that there are no plausible grounds for review.



5. On 11th October 2024, I heard further arguments from both learned counsel for the accused and the Republic.
6. I take the following view of the matter. It is a truism that the accused is deemed innocent at this stage. Under Article 49 (1) (h) of the *Constitution*, he has a right to bail pending trial unless there are compelling reasons. See generally *Muraguri v Republic* [1989] KLR 181 and *Michael Juma Oyamo & another v Republic*, Court of Appeal at Nairobi, Criminal Appeal 113 of 2018 [2019] eKLR.
7. The record shows that bail was denied for reasons that go beyond the mere fact of the character of the accused or his place of residence. For instance, the learned trial judge (Nzioka J) found from the pre-bail report dated 3rd June 2021 that the accused was in possession of an unauthorized firearm. The conclusion of the report was that this was not a suitable case for release on bail. The report also indicated that the family of the deceased were apprehensive of their own safety. In the initial affidavit by the investigating officer aforementioned, it was averred that in the course of his arrest, the accused or an accomplice who was still at large, exchanged fire with the police.
8. I agree with counsel for the accused that the Republic has not filed a new affidavit to the present motion. However, the earlier deposition remains on record and the fact that there was an exchange of fire or that a toy pistol was recovered at the scene has not been controverted by the accused. I say that very carefully and without making a finding because the accused is still deemed innocent.
9. Furthermore, the record shows that on 11th November 2020, the court (Wakiaga J) in a considered ruling also declined the prayer for bail but gave the prosecution 60 days to effect the arrest of the said accomplice. The learned judge had also found that the accused had no fixed abode.
10. Two witnesses have since testified in this case. PW1 is the father of the deceased. PW2 was No. 74108 Cpl George Odhiambo who testified on the circumstances leading to the arrest of the suspect. It bears repeating that the trial is at infant stages and the accused is still deemed innocent.
11. However, the present motion must be viewed through the lenses of the prior applications for bail and the evidence of the two witnesses. So much so that the previous denial of bail was based on wider reasons beyond the mere residence of the accused. The fact that his parents are now willing to accommodate him and stand surety for him does not override the compelling reasons for denial of bail summarized above.
12. The upshot is that no sufficient grounds have been laid for review of the earlier orders denying bail. The Notice of Motion dated 16th January 2024 is hereby dismissed.

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-

The accused.

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

Mr. E. Ombuna, Court Assistant.

