



**Republic v Gitahi (Criminal Case 85 of 2019)
[2024] KEHC 15714 (KLR) (Crim) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 85 OF 2019
K KIMONDO, J
DECEMBER 13, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL WAHOME GITAHI ACCUSED

RULING

1. The accused seeks bail pending trial through a notice of motion dated 25th June 2024. He avers that plea was taken way back on 14th January 2021 but no directions on bail were ever taken. He states that he has a permanent residence in Karatina and that his father, who is ready to stand surety for him, resides in Hamza Estate Nairobi.
2. The accused further avers that “during the course of the trial [he has] been cooperative with the investigative institutions, prisons service and the court” and undertakes to abide by any conditions that may be set by the court.
3. His learned counsel, Mr. Manthi, submitted that that the accused is deemed innocent and that there are no compelling reasons to deny the motion. He relied on Articles 49 and 50 of *the Constitution* as well as the decision in Michael Juma Oyamo & another v Republic, Court of Appeal at Nairobi, Criminal Appeal 113 of 2018 [2019] eKLR. He also took issue with the validity of the replying affidavit for want of a commission and its “unfounded conclusions”.
4. The motion was opposed by the Republic primarily through the replying affidavit of Phillip Omurakaywa sworn on 6th August 2024. Learned Prosecution counsel, Ms. Kigira, clarified that the affidavit filed in court was commissioned but that the initial copy served on the counsel for the accused did not contain those details. A commissioned affidavit was subsequently served on him. I will return to the subject later.



5. The principal objections are that the accused went underground after the incident and is thus a flight-risk; and, that some accomplices remain at large. It was also submitted that the accused is largely to blame for the delays of the trial through multiple adjournments.
6. On 3rd October 2024, I heard further arguments from both learned counsel for the accused and the Republic.
7. I should add there is a pre-bail report filed on 2nd October 2024 under the hand of Mr. Kiriga Kimani, Principal Probation Officer. The probation officer recommends bail.
8. I will commence with the submission that the replying affidavit is defective. The copy on the court file shows that it was sworn on 6th August 2024 before J. K. Bosek, a Commissioner for Oaths. It may well be that a copy first supplied to counsel for the accused lacked those particulars. But the point to be made is that the replying affidavit before the court is not defective.
9. The record shows that the case was first set for hearing on 20th and 21st July 2021 but could not proceed due to absence of defence counsel. An analysis of the subsequent adjournments on 26th July 2021, 4th April 2022 and 28th July 2022 shows that they were all caused by the absence of defence counsel. One witness has since testified on 14th November 2022. The original trial judge was subsequently transferred and I took over the matter on 5th February 2024. So much so that it would not be right to blame the prosecution for the delays.
10. 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.
11. 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*.
12. 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.
13. 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 14th December 2019 at Hamza Madukani within Kamukunji Sub-County, Nairobi County, jointly with others not before the court murdered Kevin Maina Nyokabi alias Gaucho.
14. The accused deposes that he was arrested on the date of the alleged homicide. The averment by the investigating officer that the accused fled and went into hiding or was booked under OB 44/12/12/2019 seems to be erroneous. What is not in doubt is that he was arrested by members of the public and that there are some accomplices at large. I however note that the accused was first presented to court on 31st December 2019 and no further arrests have been made.



15. The Victims Protection Act 2014 now requires that the views of the victim's family be considered at this stage. The family is still grieving the loss of a loved one. But according to the pre-bail report, they "are not opposed to his admission to bail/bond citing that he should be careful not to interfere with witnesses in the matter". The accused on the other hand undertakes to relocate to Nyeri for the duration of the trial.
16. The upshot is that no compelling reasons for denial of bail have been established by the prosecution. But I will set four stringent conditions to guarantee his attendance to court and to shield the remaining witnesses from any threats or interference.
17. Firstly, the accused may now be released upon executing a cognizance in the sum of Kshs 500,000 (five hundred thousand only) together with one surety of a similar sum. The surety shall be examined and approved by the Deputy Registrar of this Court. In the alternative, he may post a cash bail in the sum of Kshs 700,000 (seven hundred thousand only) together with one contact person to be approved by the Deputy Registrar.
18. Secondly, the accused shall not have any direct or indirect contact with any of the remaining witnesses listed in the committal bundle supplied to the defence counsel and the court until the conclusion of his trial.
19. Thirdly, the accused shall immediately relocate to Karatina, Nyeri County and must not set foot at Hamza Madukani, Kamukunji Sub-County, Nairobi County in Nairobi, without prior permission of the court.
20. Fourthly, he must attend a special mention before the Deputy Registrar of the Criminal Division at Nairobi once every three months the first such mention to be held on 3rd March 2025 and until the conclusion of the trial or further orders of the court.
21. In default of any of the four conditions above, his bond shall stand cancelled; and, the surety or contact person shall be called to account.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF DECEMBER 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Mr. Manthi for the accused instructed by Karago & Company Advocates.

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

Mr. E. Ombuna, Court Assistant.

