



**Republic v Luvonga (Criminal Case E014 of 2023)  
[2024] KEHC 16845 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16845 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E014 OF 2023  
DO CHEPKWONY, J  
DECEMBER 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PAUL WEKESA LUVONGA ..... ACCUSED**

**RULING**

1. The Accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of offence are that:-

“On the night of 8<sup>th</sup> February, 2023 at Kentmere Area in Limuru Sub County within Kiambu County, the accused person murdered John Ngemai Nathiana.’

2. The accused was arraigned in court on 29<sup>th</sup> March, 2023 whereby he was informed that there was a mental assessment report filed showing that he was mentally fit to plead and he was remanded in custody to await being assigned legal representation and plea taking.
3. On 5<sup>th</sup> April, 2023, the accused person having been assigned pro-bono counsel, Mr. Memba Mayama, pleaded “Not Guilty” to the offence of Murder. The accused through his counsel sought to be released on bond/bail terms and the prosecution, through M/S Ngesa indicated that they were intending to oppose the application. She urged that the defence file a formal application so they would respond. The court also called for a social inquiry to be conducted on the accused person the Probation and After Care Services personnel and for a Pre-bail Information Report to be filed in court in this regard.
4. The accused filed a Notice of Motion application dated 13<sup>th</sup> April, 2023 and this is what is set for determination by this court. The accused is seeking orders:-



- a. That the court be pleased to grant the Applicant bail or bond on favourable terms.
  - b. THAT costs of the application be on the cause.
5. The Application is based on the grounds as set out on its face of it and reiterated in the Supporting Affidavit of Paul Wekesa Luvonga wherein the Applicant has pointed out that under Article 49 (1) (h) of the *Constitution* of Kenya, he has a right to be released on bond/bail terms which can only be denied where there are compelling reasons. According to the accused/Applicant, he has cooperated with the investigating authorities since his arrest, he has a fixed place of abode and is willing to comply with the conditions that the court may set, since he has strong family ties. It is his contention that there is no risk that he will interfere with witnesses and it is in the interest of justice that the orders he has sought be granted.
  6. The State filed a Replying Affidavit sworn by No. 119659 PC Eric Mwai, the Investigating Officer in this matter where he contends that there are compelling reasons to oppose the release of the accused person on bail/bond terms. He has averred that before the fateful day, the accused and the deceased were both working as farmhands and stayed at their employer's compound, and therefore the accused does not have a permanent address, thus he is a flight risk with a high probability of absconding court attendances. Also, it is the Investigating Officer's submission that the community where the accused stays is agitated by the offence that his security will be at risk if he is released on bond.
  7. According to the Investigating Officer, the likelihood of accused interfering with witnesses in this case is high especially his employer who is the main witness for the prosecution and the investigations are still ongoing since the exhibits, being two pangas, table sheet and stick have been submitted to the government analysis and they are awaiting a report, so that it will be premature to release the accused person. The Investigating Officer urges that it will be in the interest of justice for the trial court to take the testimony of the said witnesses first before considering whether or not to release the accused on bond or bail.
  8. The Bail Information Report was filed on 9<sup>th</sup> June, 2023 and in conducting social inquiry, the Probation Officer took into consideration the accused persons background, personal profile, character, alongside victim's concern and community setup. In conclusion, the Probation Officer has urged the court to make appropriate orders.
  9. I have considered the application, the affidavits, in support and in opposition thereof and the Pre-bail Information Report and find the issue for determination being whether the prosecution has demonstrated any compelling reason(s) to warrant the accused being denied release on bond/bail terms.
  10. Article 49(1)(h) of the *Constitution* it is not automatically granted if there are compelling reasons to deny it. Article 49 (1)(h) provides that: -
    - “ An accused person has the right ...
      - (h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.’
  11. From this provision, it is clear that although release on bond or bail is a right of an accused person, the same is not automatically granted if there are compelling reasons to deny the accused release on



bond/bail terms. In the case of *Republic v Robert Zippor Nzilu* HCCR. Case No.17 of 2018,eKLR, the Court had this to say on this provision:-

“It is essential to recognize that the imposition of limitations on the right to bail must be approached with utmost care. The court, in exercising its discretion, must not only take into account the reasons for denying bail but must also explore whether there exist less restrictive means to attain the intended purpose”.

12. Further, in the case of *Republic v Joseph Thiongo Waweru & 17 Others* [2017] eKLR, the Court defined ‘compelling reasons’ as follows: -

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

13. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provides for various factors which ought to be considered in bail and bond application as follows:-

(1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

- (a) the nature or seriousness of the offence;
- (b) the character, antecedents, associations and community ties of the accused person;
- (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
- (d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- (b) should be kept in custody for his own protection.

14. The factors have been restated in the *Judiciary Bail and Bond Policy Guidelines*, at Paragraph 4.9 that:-

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

15. In this case, having considered the grounds upon which the accused has based his application and the grounds raised in the Replying Affidavit of the State, it is clear that the compelling grounds that the



prosecution has relied on to urge for the accused to be denied release on bond/bail are that the accused has no place of abode, hence he is a flight risk; that he is likely to interfere with prosecution's witnesses, more particularly his employer; incomplete investigations and the community being agitated with him for the offence committed thus the fear for his security. It is worth-noting that the prosecution has not demonstrated all these claims and yet the burden of upon them to prove the existence of such claims and not just allege in apprehension. The most ridiculous is the claim that the accused is likely to interfere with the evidence of his and the deceased's employer. The question is "who between the accused and employer has authority over the other? For now, the court shall dismiss the application dated 13<sup>th</sup> April, 2023 and direct the accused person to be remanded pending trial.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Ndeda counsel for the State

Mr. Memba Mayama counsel for accused

Accused present

Court Assistant - Martin

