



**Republic v Chege (Criminal Case E038 of 2024)
[2024] KEHC 15611 (KLR) (Crim) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E038 OF 2024
LN MUTENDE, J
DECEMBER 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOYCE BERNICE WANJIKU CHEGE ACCUSED

RULING

1. Joyce Bernice Wanjiku Chege, the Accused, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) following allegations that she murdered Marcel Orwa Orendi on 11th September, 2024 at Donholm.
2. Having denied the information presented by the Director of Public Prosecutions; through an affidavit deposed by No. 100678 PC Josphat Mungania, the Investigating Officer, the State opposes release of the accused on bail/bond pending trial.
3. It is deposed that after the act the accused fled to her aunt's place of residence in Nyahururu County where she was traced and arrested. That having been arrested nine (9) months later it has been demonstrated that she is a flight risk.
4. That the accused has neither place of abode nor a place of gainful employment as her former place of work is not guaranteed. That the accused faces a serious offence and if found guilty the punishment to be meted out would be death penalty.
5. In the replying affidavit it is averred that the right to bail implements the basic presumption of innocence that the law assumes to every person. That the prosecution has not tabled sufficient evidence before the court warranting denial of bail.



6. That the accused had a miscarriage following the altercation and stayed in Nairobi but visited her aunt a month before her arrest, therefore, she did not abscond.
7. The application was disposed through written submissions. It is urged by the applicant that the objective of bail is to ensure the accused gets liberty and also to attend court as stipulated in Article 50(2) of the Constitution and bail must be reasonable as provided by the Judiciary's Bail and Bond Policy Guidelines.
8. Relying on the holding in Republic v John Kabindi Karisa & 2 others [2010] eKLR, it is urged that the question to be considered is whether the accused will turn up for trial and the case should be looked at under the prism of Article 49(2) of the Constitution.
9. That the accused did not run away but had gone to Nyahururu to visit her aunt Nine and a half months after the incident occurred.
10. The State reiterating how the offence was purportedly committed submitted that the accused is a flight risk. That her conduct of fleeing from the scene immediately after the act without informing the employer irresistibly points at her as a person who is likely to disappear without a trace. Reliance was placed on the case of Republic v John Gatambia Gathoni [2017] eKLR where it was stated that:

“However, the prosecution's fears that the accused is a flight risk is not just flippant. The accused person has given the prosecution reason to be apprehensive that he may not ultimately show up for his trial. He did this by running away after the incident. He was arrested more than 150km. away from Narok County-and even then, only because a relative happened to be in the area. The accused person's explanation that he ran away due to the shock of the incident and needed to calm the tensions in the family is implausible.”
11. That although the family of the accused is willing to relocate her to a place they will ensure she attends court no coherent plans have been put in place.
12. A pre-bail report was prepared by a Probation Officer following social inquiries carried out. It was established that the accused is a single mother of a 4 years old child who stays with her mother in Nyahururu and is unable to attend school due to lack of finances. The accused was in a relationship with the primary victim prior to the incident.
13. The secondary victims' views through the surviving parent of the primary victim oppose release of the accused on bond citing the question of the accused being a flight risk. And, that witnesses are known to the accused hence there is a likelihood of interference which may not be limited to intimidation and issuance of threats.
14. The local administration opposed release of the accused on bail citing the reason of the accused being a flight risk. The Investigating Officer argued that it took them long to locate the accused who fled.
15. Acknowledging that the family of the deceased is devastated, the Probation Officer stated that the accused is 22 years old, and recommended that bail could be given but with stringent terms to curb the risk that had been highlighted.
16. Article 49(1)(h) of the Constitution provides that:
 - (1) An arrested 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.



17. The accused person is presumed innocent until the contrary is proved (See Article 50(2) of the Constitution) this is why pretrial detention is frowned at.
18. Bail in the instant case is vehemently opposed on three (3) grounds. The seriousness of the offence which may be an incentive to abscond; the accused being a flight risk; and, the likelihood of interfering with witnesses.
19. The question to be grappled with is whether the reasons given amount to compelling reasons in the instant case requiring denial of bail. What constitutes compelling reasons, though not defined by the Constitution, was considered in Republic v Joktan Mayende & 4 others [2012] eKLR where it was stated that:

“...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 standards set by the Constitution.”
20. Murder is a serious offence. The punishment to be imposed in event of a conviction is up to death penalty. Indeed, this could motivate the person to escape. However, measures can be put in place to discourage/prevent the accused from fleeing and in the result refusing to turn up for trial. This would also address the question of being a flight risk.
21. It is urged that the witnesses are the accused friends that may be prevented from giving evidence following influence or intimidation by the accused. An accused person may be denied liberty during trial if it is established that there is a likelihood of interfering with witnesses. The Bail and Bond Policy Guidelines provide for a scenario where the accused has been provided with witness statements hence knows identities of the witnesses and the nature of the evidence they will adduce which may call for denial of bail.
22. The victims are apprehensive that there is a possibility of interference with witnesses, but, it has not been demonstrated if the accused acted in a manner that would influence them to become hostile by becoming unfavorable witnesses to the State.
23. On the question of friends who are not pointed out being influenced by the accused, it is a matter of assessing the importance the interest of the accused constitutional rights being a young adult against incarcerating her when she is presumed innocent at this stage.
24. What is established is the fact of the accused having left the area of the incident and stayed away until she was arrested. This would call for denial of bail on the likelihood of the accused absconding, however, considering her age and the child that she should fend for, the circumstances should call for consideration.
25. In the result, I find the State having not put forth convincing reasons that would require denial of bail in the instant case. In the result, I make orders thus:

The accused be and is hereby granted bond of Kenya Shillings five hundred thousand (Ksh. 500,000/-) with two (2) sureties of similar amounts.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 5TH DAY OF DECEMBER, 2024.



L. N. MUTENDE
JUDGE

