



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION - MILIMANI COURT
CRIMINAL APPEAL NO. E076 OF 2021
REPUBLICPROSECUTOR/ODPP

VS

VINCENT MOGAKA.....ACCUSED APPLICANT

BAIL BOND REVIEW RULING

1. The Accused is charged with the offence of murder contrary to Section 203 as read with 204 of Penal Code
2. On the night of 27th & 28th day of September 2021 at Pipeline Estate Embakasi Sub County within Nairobi County in the Republic of Kenya murdered Esther Akai.

3. The Accused person pleaded not guilty to the charge on charge dated 25/10/2021. He was found FIT TO PLEAD when plea was taken on 26/10/2021.

The Applicant/Accused person applied for bail /bond review;

4. The Court considered the evidence on record so far as follows;

The Application for Bail and Bond was dismissed vide Ruling of 25/1/2023 by Hon JM Bwonong'a J, the Accused person would get specialized care in Prisons and if not referral would be from and by Prisons.

The application for review of Bail & Bond was vide Ruling delivered on 25/4/2024 by Hon LJ L Mutende bail and bond were denied on the basis of the fact the Applicant attempted to commit suicide and also he applied to seek specialized treatment through a referral hospital. The Court found it was for his own safety that he remained in custody and specialized treatment was available while in custody.

ORAL SUBMISSIONS

5. The Applicant sought review of bail Bond Terms. Mr Ondieki on behalf of the Accused made oral application that the Applicant had a constitutional right to bail and bond. Various Applications were turned down by the Court due to reliance on the Affidavit of I/O whose claims are imaginary and unsubstantiated and the Court should allow the review of bond terms and grant bail and/or bond.
6. ODPP Ms Tum objected to grant of review of bail /Bond Terms as the Accused person was in custody for his own safety and security. On treatment; the Accused person was admitted at Kenyatta National Hospital for specialized treatment of self -inflicted injuries. These are factual issues not imaginary as alleged.
7. Mr Ondieki for Accused reiterated that it is clear from the facts of the case that the Accused and deceased were in the room and were rescued, the deceased died and the accused survived. From injuries sustained, there was a 3rd Person whom the I/O did not investigate. How would the Accused self-slit his throat and open the stomach? The Accused was/is full of life and he would not take his own life.

8. The ODPP filed written submissions on review of bail and bond terms and relied on the case of **Republic vs Francis Maina Wairimu [2020] eKLR** that an application for review of bail /bond terms, the Applicant ought to convince the Court of the change of circumstances from the time when he was denied bail /bond.
9. The ODPP deposed the Accused person and deceased minor were neighbors at the time the incident took place and the witnesses are neighbors who are well known to Accused person and hence there is likelihood of interference of the witnesses.
10. The Probation Officer's Pre - bail Report did not recommend release on bail/bond terms as witnesses were well known to Accused person and there was a high chance of threat and intimidation that would occur if the Accused person was released on bail/bond.
11. The ODPP reiterated the Accused person was /is a flight risk as after the incident, the Accused person fled with the help of his father and was later traced in Kayole. These facts depict one who may take flight. In the case of **Republic vs Shikuku alias Ben [2022]e KLR** where the Court

intimated that failure to surrender to the Police after the incident that led to death of the deceased did not carry favor with the Court.

12. In the case of **Republic v John Gatambia Gathoni [2017] eKLR**, the Judge 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 150kms 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.
13. The Accused made oral submissions and did not file Written submissions.

DISPOSITION

14. For now, I find in the absence of new or changed circumstances to warrant bail and bond review.

15. The Applicant/Accused person did not file any medical documents confirming health

situation that warranted referral or special or urgent medical care outside Prison Authorities.

16. The grant of bail and Bond is withheld until change of circumstances and/or commencement, progress and expedited hearing.

RULING DELIVERED DATED & SIGNED IN OPEN COURT INCRIMINAL DIVISION OF THE HIGH COURT NAIROBI ON 30/10/2025 VIRTUALLY /PHYSICALLY

**M.W.MUIGAI
JUDGE**