



REPUBLIC OF KENYA
THE HIGH COURT AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. E076 OF 2023
REPUBLIC -Vs- GUYO GARO OCHA
RULING ON BAIL.

1. The accused/applicant was arraigned and charged with the offence of Murder contrary to Section 203 as the particulars of the offence are that:

On 22/11/2020 at around 0300HRS at a car wash in Kiamaiko within Huruma estate in Starehe sub county within Nairobi the accused murdered **LABAN MUIRURI NJAMBI.**

2. The accused took plea on 15/11/2023 when he pleaded

“ si kweli.” Not guilty.

3. The accused prays for bail / bond pending his trial and urges that is entitled to reasonable bond terms and the presumption of innocence.

REPLYING AFFIDAVIT.

4. The prosecution filed the affidavit of No. 78812 PC Paul Nyoro to contest the application.

5. The Police explain that the incident occurred in a car wash where the accused accosted the deceased as he had connected a water pump machine to the accused's electric switch.

6. The accused is a flight risk and that he went hiding after committing the offence .He was traced after 3 years when he on 24/10/2023 appeared at a college in Dandora estate he was spotted by a student at the college who is also a witness in this case and is known by the accused.

7. The accused was arrested by a contingent of officers from Dandora Police Station .The accused alleged that he moved from Kiamaiiko to Dandora where he was hosted by a friend and nursed injuries inflicted on the date of the offence.

8. That preliminary investigations reveal that he hails from Marsabit County which is in the border between Kenya and Ethiopia .That the accused never applied for

identification card and does not have documents to prove nationality.

9. That having fled for 3 years, lack of identity card all lead to apprehension that he is a flight risk and that it would be difficult to trace him if released.

ACCUSED REPLYING AFFIDAVIT

10. The accused filed his affidavit in response to the prosecution's affidavit. The accused contends every person is entitled to bail despite nature of offence .That the prosecution claim that he will abscond the jurisdiction of the court is speculative . That he will not interfere with witnesses and he will not reside in Kiamaiko .

11. That his sister and brother in law Samuel Mburu will host him at their house at Zimmerman until he gets a permanent abode within the court's jurisdiction.

12. That he is a father and has roots in community .His application and prayer for bond is to enable him fend for his sick wife and 2 children.

13. That he had applied for an ID card and had a waiting card at the time of arrest and the identification card was to be ready within a month.

THE PREBAIL REPORT .

14. The probation report was filed on 31/1/2024. The Probation Officer interviewed the accused's sister and brother in law and also the victim's family and local administration in Huruma.

15. The accused is aged 36 years old he has lived with his sister since passing on of their mother. Their parents separated at a young age. He was born and raised in Huruma and he stated that he is not a flight risk and has lived in Kiamaiko all his years.

16. The accused does not have a history of drug abuse or jumping bail. He was charged in Makadara Chief Magistrate's Court in criminal case No. E7079 2023 for causing grievous harm and was released on bond of Ksh 200,000/=.

17. His sister and brother in law support his release on bond and she has humble economic means. She requests for reasonable terms and will host the accused

at Zimmerman where he will be under close supervision.

18. The accused will take care of his sick wife and children.

19. The victim statement is represented by the deceased's siblings and mother. The deceased was the last born of 4 siblings and he worked at a car wash at Kiamaiko and lived with mother at Huruma area in a plot which is opposite the scene of crime.

20. The deceased mother is still in psychological pain. The family is opposed to bail as she endured pain and stated that the accused fled to South Africa after crime commission and was apprehended in Zambia where he was serving 6 months for being illegally in the country. He was expatriated.

21. Community views from the Area Chief are that the accused is a man of good antecedent and had no issue with his neighbors and peers. That the accused fled for his safety after his house was burnt on the eve of the incident .He resurfaced after 3 years which led to his arrest. That bail can be granted.

WRITTEN SUBMISSIONS.

22. Accused submits that he has been in custody since 13/11/2023 which has been almost 2 years. That the trial is yet to commence.

23. That he is entitled to presumption of innocence and has been in remand since 13/11/2023 which is almost 2 years and trial is yet to start. That continued incarceration for 2 years without trial is curtailment of his constitutional right.

24. The applicant relies on the case of **Republic -Vs- Danson Mgunya** where the accused was in remand for 2 ½ years and had committed crime in the courts vicinity and was arrested within court premises.

25. That no prejudice will be suffered if he is released on bond and that liberty is precious and is to be jealously protected.

26. That bail should be commensurate with the circumstances and not exorbitant to send a message of being punitive and to offend the presumption of innocence. That the court should strike a balance between the presumption of innocence, public interest and the benefit of due process.

27. There is no evidence of witness interference or obstruction of justice and the accused will comply with conditions.

28. These include regular reporting, restrictions on contacting witnesses and surety requirements.

ANALYSIS & DETERMINATION.

29. **Article 49 (1) (h) of the Constitution** provides that

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.”

30. The application having being opposed, the burden remains on the prosecution to prove reasons listed under Section 123A of the Criminal Procedure Code.

31. In **Republic -Vs -Nicholas Kipkemoi Kirui[2021]eKLR** the **High Court** relied on

**Republic -Vs- Danson Mugunya & Another
Mombasa Criminal Case No. 26 of 2008** holding
that :-

“I do hold that if the prosecutor objects to the release of the accused person pending trial, then at the first instance, the burden should be on the prosecution and not the accused to prove or at least to demonstrate the existence of the compelling reasons.”

33. The compelling reason as per the Replying Affidavit is that the accused is a flight risk after he fled from the scene and was arrested after 3 years at Dandora .

34. That the accused also hails from Marsabit Kenya - Ethiopia border and does not have identity card. His citizenship is not disclosed.

35. The victim family claimed that the accused travelled to South Africa and that he was arrested and Zambia for being illegally in the country .He was later repatriated.

36. These facts have been urged to dispute the accused assurance that he will turn up for trial if he is released.

37. Indeed the main objective of bond is to facilitate the accused attendance and where there is doubt bail should be declined.

38. I find that the victim's assertion on how the accused fled from the country and was later charged in Zambia is unproved.

39. The investigating officer have also claimed that he hails from Mandera as per preliminary reports. The accused cautionary statement indicates that he is from Marsabit Manyatta, however the cautionary statement like other prosecution witness statements is left for the trial .

40. The prebail report filed following investigations and interviews indicates that he was born in Huruma and he had lived in Kiamaiko all his life. This contradiction and lack of documentary evidence leads to conclusion that this ground has not been proved.

41. Further, the fact that he is from a border town is not a ground to deny him bond. The accused has similar rights as persons who come from the hinterland.

Republic -Vs- Kokonya Muhssin (2013) eKlr where the court held that there must be something more than merely residing in the border town.

42. I take judicial notice that the border-situation is quite unique. You find members of the same family living on both sides. I do not however think the border-situation by itself is a sufficient proof that the accused will abscond. The situation must be accompanied by something else or evidence on the part of the accused that makes the possibility of absconding real. The accused is a Kenyan citizen and the fact that he was born at the border or finds himself in the border-situation, should not make his prospects to be released on bond any less than for other Kenyans or persons living in the hinterland. Likewise, that argument does not yield much in support of the objection to bail'.

43. The investigating officer states on oath that the accused did not have an identity card, this is admitted by the accused who further states that he has a waiting card and his identity card was due soon after his arrest.

44. The burden was on the accused to avail this evidence and to disprove possibility that he would not be traced after he is released.

45. The fact that he had a waiting card was not disclosed to the police during arrest and investigations. This was necessary in a case where the police doubted his nationality.

46. The accused was also traced after 3 years and there is no doubt that he had gone to hiding and this delayed investigations and arraignment.

47. I further considered the committal bundle, the witness statements and the age of the case.

48. The accused has inherent rights which include that he is presumed innocent until all allegations are proved against him. He is also entitled to a trial that is just and expeditious. The latter is a necessary principle of justice and fair trial.

49. Article 50(2)(a) of the Constitution of Kenya provides that:

“Every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved.”

50. However, denying him bond does not affect this right. In the case of **Republic -Vs- Stephen Kinini Wang’onde & 4 others [2021] eKLR** the High Court held that:

“The accused persons have a right to be presumed innocent until proven guilty. This right must be guarded throughout the trial until one is convicted of the offence charged. However, I wish to state that the act of denying bail does not in any way mean that this right has been denied. The objective of keeping an accused in custody serves the purpose of ensuring he attends the trial and this will happen in cases where it has been established that the accused is a flight risk or is likely to interfere with witnesses.”

51. The accused also urged that lengthy pretrial detention spanning for almost 2 years amounts to violation of his rights. He was arraigned on 15/11/2023

and the matter has been active save that the hearing has not commenced.

52. The existence of compelling reason at the time of arrest and at the time of ruling, to wit doubt that he will turn up for trial lack of identification card , doubted nationality and a history of evading investigations and arrest for 3 years, prevents this court from upholding his right bond .

53. This burden has been discharged by the prosecution allowing the court to decline the accused application.

54. In **Republic -Vs- Kokonya Muhssin** (supra) the court held at paragraph19 that:

“ When the court releases the accused on bail, it is expected that the accused will attend court on the dates appointed for the mention or hearing of the case. If attendance by the accused is not guaranteed even by any amount of security or surety, then the accused will be denied bail. But it is for the Prosecution to prove the possibility to abscond is real by producing evidence that is real and cogent evidence as to lead the court

to make an inescapable inference that the accused will, most likely than not, abscond. Accordingly, a possibility that is fanciful or imagined or based on fear or apprehension or believe is not sufficient as a compelling reason. The standard is high and must be attained by the Prosecution if the right to bail is to be limited on this ground.”

DISPOSITION

56. I find that pretrial detention is within the law and not a violation of his constitutional rights but every case ought to be heard and determined within reasonable time.

57. In conclusion, the application for bond is declined at this stage due to lack of identification ID card , fixed abode; his house was burnt down and the interview with family did not yield much no name is given of his sister her residence occupation and what are the arrangements to bail her brother; the wife and children of Accused person not verified , name place of residence activity. The Accused is a flight risk after the incident ,he fled and was arrested after 3 years later. Finally, he has another case

ongoing in Makadara E7079 of 2023. The accused shall regularise details of his identification card with further letters from the Registrar confirming his nationality.

58. The prosecution shall arrange for witness summons for all key witnesses and to expedite hearing of the matter.

**DELIVERED SIGNED & DATED IN OPEN COURT AT
HIGH COURT CRIMINAL DIVISION-MILIMANI ON
17/11/2025 VIRTUALLY/PHYSICALLY.**

**M.W. MUIGAI
JUDGE**