



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION- MILIMANI COURT
CRIMINAL CASE NO. 025 OF 2022

REPUBLIC.....PROSECUT
OR
SEBASTIAN KAMAU KAMANDE
.....ACCUSED

RULING

INFORMATION

1. The Accused Person herein **Sebastian Kamau Kamande**, 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.**

COUNT I

2.Particulars of the offence being that on the night of 28th and 29th March, 2022 at Dandora Phase I Estate within Njiru Sub-County in Nairobi County murdered **Rahab Muthoni Maina.**

COUNT 2

3.Particulars of the offence being that on the night of 28th and 29th March, 2022 at Dandora Phase I Estate within Njiru Sub-County in Nairobi County **Abigael Muthoni Nyaguthii**

NOTICE OF MOTION

4. On 14th October 2024 the accused person filed a Notice of Motion dated 30th September 2024 seeking the following Orders:-

1. THAT the Court be pleased to certify the application as extremely urgent and the same be heard forthwith.
2. THAT the Court be pleased to admit the accused Sebastian Kamau Kamande to a free bond or reasonable terms.
3. THAT the Court makes any other Order that it deem fit.

5. GROUND OF APPLICATION FOR ORDERS:-

1. THAT the date of arrest and charge is not denied.
2. THAT the Applicant is currently in remand.

3. THAT the offence is bailable.

4. THAT the applicant is willing to abide by the bond terms.

5. THAT the applicant is a law-abiding citizen residing at 89

Kenol, Kenya

6. THAT the Applicant is not a flight risk person.

7. THAT there are no compelling reasons to have him in

remand and his safety is not in danger in any way.

8. THAT the Applicant will not interfere with investigations.

9. THAT the Applicant surrendered to police.

10. THAT it is in the interest of justice and within the

discretion of this the Court to consider granting the Orders sought.

ACCUSED PERSON'S SUBMISSIONS

6. ISSUE FOR DETERMINATION

- (a) Whether the Applicant is entitled to bail pending trial in accordance with **Article 49(1)(h)** of the Constitution of Kenya, 2010.

RULE

1. Bail and Bond is provided for under **Article 49(1)(b)**, Constitution of Kenya (2010), **Section 123 A** of the **Criminal Procedure Code** and the Judiciary Bail and Policy Guidelines (2015)
2. **Article 49(1)(h)** of the Constitution of Kenya provides that:-

An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

3. There after **Section 123A** of the **Criminal Procedure Code** reiterates that bail may only be denied where compelling reasons exist, considering factors such as likelihood of absconding, interference with witnesses, or safety of the accused.

ANALYSIS

4. The accused person has been in remand since 1st April 2022. He is close to hitting four years in remand and he has not been heard on the issue of bail and bond since his arrest. The Prosecution, has not demonstrated any compelling reasons to justify continued detention during the course of his trial. The accused person has a fixed

residence in Dandora and his brother Bernard Kamande is willing to house him during the pendency of the trial.

5. The Applicant is the sole breadwinner for his three young children, who are residing with their grandmother. His absence has placed undue financial and emotional burden on his family, particularly his children who are deprived of their primary caregiver and financial support. The applicant is responsible for the care and support of his aging parents, who are experiencing significant financial hardship due to the repeated destruction of his father's workplace at Gikomba Market by fire. The applicant has deep roots in his community and demonstrates before the court the compelling need to be present to fulfill his familial obligations thus making him highly unlikely to abscond.
6. The Applicant is a Kenyan citizen with no foreign attachments, thereby eliminating any credible risk of him fleeing the jurisdiction. His entire life, family, and responsibilities are firmly established within Kenya. He has no incentive or means to evade justice and is committed to facing the charges against him. The applicant is not a flight

risk and will not evade the court in the event he is granted Bail or Bond.

7. The court takes cognizance of the presumption of innocence and that bail ought not to be used as punishment. The constitutional right of the applicant would be curtailed unnecessarily if indeed he continues to languish in custody for 3-4 years without a determination on the issue of Bail or Bond.

ACCUSED PERSONS'S SUPPORTING

AFFIDAVIT

8. On 24th October 2024 the accused person filed a supporting affidavit dated 30th September 2024 and stated as follows:-

1. THAT he surrendered to Dandora Police Station.
2. THAT he entered plea on 25th May, 2022 and he was not released on Bail or Bond pending trial.
3. THAT he is not a flight risk and he is willing to abide by any reasonable conditions imposed by the court.
4. THAT he will not interfere with investigations.
5. THAT he has a constitutional right to be released

on Bail or Bond pending trial.

6. THAT there are no compelling reasons for not admitting him to Bail or Bond pending trial.
7. THAT he seek the Court to grant the Orders sought in the interest of justice

PROSECUTION'S SUBMISSIONS

9. The accused person is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars are that on the night of 28th and 29th March 2022, at Dandora Phase 1 Estate Njiru Sub-County within Nairobi County murdered **Rahab Muhoni Maina And Abigael Muthoni Nyaguthi**
10. The accused person through his counsel filed a Bail/bond application through submissions dated 15th October 2025. The State opposed the said application and submitted that there are several compelling reasons exist which justify the denial of bond to the accused person. The reasons detailed herein, constitute undeniable factors that the court must consider.

GROUND OF OPPOSING BAIL/BOND:

The overwhelming strength of the prosecution's case and the serious nature of the offence

11. The accused person faces the grave offence of murder, which carried a severe sentence upon conviction. The evidence assembled by the prosecution establishes a formidable prima facie case, significantly increasing the probability that the accused will abscond if released. The case is built in the solid foundation of the direct admissions and incriminating conduct of the accused. The accused sent a series of chilling messages to his brother, **PW5 Bernard Mungai Kamande**, immediately after the crime stating the victims were in "very bad condition" instructing the removal of property, indicating his own distressed state. He then switched off his phone and fled Nairobi.
12. The Post Mortem report confirms violent deaths by strangulation and smothering. The accused was arrested with fresh scratches on his neck which he gave an implausible explanation for. Crucially, scratch marks were found on the fingernails of the deceased Abigael Muthoni, with samples taken for DNA analysis, directly linking the accused to a violent struggle.
13. The neighbors also placed the accused at the scene, confirm the victims were alive and well in

his presence, heard no disturbance, and noted his suspicious departure on the morning the bodies were discovered.

14. In **Republic Vs. Margaret Nyaguthi Kimeu (2013) eKLR**, the court stated that

"I have considered the application, the nature of the offence and the strength of the evidence on record and the severity of the sentence to be meted out if the applicant is found guilty."

High likelihood of the accused interfering with prosecution witnesses

15. They submitted that the key prosecution witnesses are intimately known to the accused and reside within the community of Dandora. These witnesses include; PW5, Benson Murago Kamande, the accused's own brother who received the damning messages and discovered the bodies. PW1, Yvonne Gathigia, the caretaker of the rental property where the crime occurred, D5, Fredrick Odhiambo, a neighbor, provided crucial timeline evidence.

16. The accused is privy to the identities and the nature of the evidence these witnesses will give. Releasing him back into the very community where they live creates a genuine and reasonable apprehension that he may intimidate, influence or inflict fear upon them to alter their testimony.
17. In **Republic vs Fredrick Ole Leliman & 4 others eKLR**, Lesiit J
held that interference with witnesses is a compelling reason for denial of bond and can occur at any stage, including during trial.

FLIGHT RISK

18. The accused's own actions following the crime demonstrate a clear intent to flee and avoid arrest. He did not report the incident, instead he sent cryptic messages, switched off his communication and fled Nairobi. He was subsequently tracked and arrested at Kangaru, Embu County. This pattern of conduct proves he is a manifest of a flight risk. The overwhelming evidence and severe penalty he faces provide a powerful incentive for him not to attend trial if released.

In **Republic vs. Shikuku Alias Ben (2022)** the accused was denied bail for his failure to surrender and going underground for a period of two years as a fugitive of justice, the same applies to the accused person in this case due to his actions after the crime was committed.

ANALYSIS & DETERMINATION

19. Article 49(1)(h) of the Constitution 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.

20. The considerations in determining whether or not to grant bail are set out in **Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at P. 25 -4.26** which sets out judicial policy on bail/bond thus:-

"The following procedures should apply to the bail hearing:

a. The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that

justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:-

- b. That the accused person is likely to fail to attend court proceedings; or***
- c. That the accused person is likely to commit, or abet the commission of, serious offence; or***
- d. That the exception to the right to bail stipulated under Section 123A of the criminal Procedure Code is applicable in the circumstances; or***
- e. That the accused person is likely to endanger the safety of victims, individuals or the public; or***
- f. That the accused person is likely to interfere with witnesses or evidence; or***
- g. That the accused person is likely to endanger national security; or***
- h. That it is in the public interest to detain the accused person in custody.”***

INTERFERENCE WITH WITNESSES

21. In this case the prosecution has opposed bail on the ground that there is a likelihood that the accused may interfere with the two witnesses John Kamande father to the Accused person and Frederick Obiero a neighbour to the Accused

person who should testify first then bail & bond maybe granted.

22. In **Rep Vs. Dwight Sagaray & others High Court Criminal Case No. 61 of 2012, Milimani.** In that case **R. Korir, J.** stated what the prosecution needed to adduce in order to persuade the court that the accused was likely to interfere with witnesses thus:

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others..., at least some facts must be placed before court otherwise it is asking the court to speculate.”

23. The Accused person through Counsel reiterates that no compelling reason (s) have been advanced

to curtail his right to bail & bond. The Pre-Bail report is well balanced as to his conduct and in community ties save for circumstances leading to the offences in Court, He is not a flight risk has fixed abode in Dandora. Law Enforcement have not objected to his release on bond save for ODPP. The assessment indicates though he has no known past criminal record and he has positive family support but has criminogenic risk factors in alcohol, anger aggression against others impulsive and recklessness.

24. For the prevailing circumstances the Court will err on the side of caution and have the named witnesses testify and thereafter, the accused person will renew his application on grant of bail & bond.

DISPOSITION

1. BAIL & BOND WILL BE CONSIDERED AFTER HEARING OF 2 NAMED WITNESSES

2. THE HEARING WILL BE EXPEDITED IN THE INTEREST OF JUSTICE.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT
CRIMINAL DIVISION OF HIGH COURT
NAIROBI ON 16/4/2026**

M.W. MUIGAI
JUDGE

IN THE PRESENCE OF

1. *Ms. Nganga for the Accused person*
Court - *Further mention on 4/5/2026*

ORIGINAL