



**Republic v Kandie (Criminal Case E058 of 2023)  
[2024] KEHC 656 (KLR) (Crim) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E058 OF 2023  
LN MUTENDE, J  
JANUARY 31, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CECILIA CHEBET KANDIE ..... ACCUSED**

**RULING**

1. Cecilia Chebet Kandie, the Accused /Applicant is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal code](#). Particulars of the information being that on the night of 1<sup>st</sup> and 2<sup>nd</sup> August,2023, within Zimmerman area of Kasarani Sub- County, she murdered Nelson Mandela Otido.
2. She seeks to be released on bail/bond pending trial on grounds that she is entitled to presumption of innocence, an inalienable right that can only be restricted where there are compelling reasons.
3. The application is opposed by the State through No. 81168 Sergeant Luke Marwa who depones that key witnesses are people known to her and there is reasonable apprehension that if released on bail/ bond there is a likelihood of witnesses being threatened, intimidated, coerced or in any other way influenced.
4. That the accused has no fixed abode or no meaningful/gainful employment and the crime scene was the house of the deceased. He called upon the court to balance the rights of all persons including the victims and the right to life by enabling witnesses to testify without any fear.
5. On her part the accused deposes that unless compelling reasons exist she should be released on bail. That knowing a potential witness cannot be presumed to be a ground of intimidation or interference



with the witness. That she has no close familial relationship with any witness and her release will not present any risk to the witnesses.

6. That she has a fixed place of abode in Matuu area Kateki town where she lived with her elderly mother and younger sister prior to being incarcerated and she is not a flight risk.
7. The application was canvassed through written submissions which I have considered together with the affidavits in support and opposition of the application.
8. The accused person's right to bail pending trial is a constitutional right as envisaged under Article 49 (1) (h) of the *Constitution* that 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”

9. It is also within the accused right to fair trial and to be presumed innocent until proven otherwise. As clearly stated, the right under Article 49(1)(h) of the *Constitution* can only be limited where the State establishes compelling reasons in the case. In determining whether compelling reasons are existent, the court may be guided by the provisions of Section 123A of the *Criminal Procedure Code*, that stipulate 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.
10. *Judiciary's Bail and Bond Policy Guidelines*, 2015 which provides as follows:
    - 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:
      - a. That the accused person is likely to fail to attend court proceedings; or
      - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or



- c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
  - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
  - e. That the accused person is likely to interfere with witnesses or evidence; or
  - f. That the accused person is likely to endanger national security; or
  - g. That it is in the public interest to detain the accused person in custody.
11. It is urged that the accused herein is likely to interfere with witnesses and also abscond trial, the burden was on the prosecution to establish the allegation. No evidence was put forth to prove the same. On ground that the accused would interfere with witnesses the prosecution must similarly not speculate or act on whims but such conclusions must be advised and based on evidence on record for the court to interrogate and the accused to reiterate.
12. In order for the court to reach an informed decision it sought the input of the probation officer. According to the report filed after a social inquiry conducted, it is recommended that the accused, a young adult aged 26 years may be released on bond with stringent terms since the State vehemently opposed her release on bond as she may have no fixed place of abode but her cousin who houses her mother and so is willing to offer her support by staying with her.
13. Form the foregoing, I find the accused qualified to be granted bail and is granted bond of Ksh. 500,000/= with a surety of a similar sum, but the right would be limited and supervised as follows:
1. Upon release, the accused shall reside with her mother, son and cousin at Matuu, Machakos, but, to ensure she attends court whenever required.
  2. She will not visit Roysambu where witnesses reside.
  3. Any incidence contrary to these and linked to the accused would lead to cancellation of bond.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 31<sup>ST</sup> DAY OF JANUARY, 2024.**

**L. N. MUTENDE**

**JUDGE**

In the presence of:

Court Assistant: Habiba

Ms Tum for the State

Accused

Mr. Mbugua Munyiri holding brief for Ms Wambui for Accused

