



**Republic v Oyony (Criminal Case E049 of 2023)  
[2024] KEHC 1361 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 1361 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE E049 OF 2023  
TA ODERA, J  
JANUARY 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DENNIS NYAKUNDI OYONY ..... ACCUSED**

**RULING**

1. The Accused Person has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars are that on 18.10.2023 at Rioma sub-location in Marani Sub-County, within Kisii County, murdered Timonthy Omariba Momanyi.
2. He was arraigned in Court on 27.10.2023 and pleaded not guilty to the charges.
3. Mr. Wesonga for the Accused Person prayed for reasonable bond terms with an option of cash bail.
4. Mr. Ochengo for the State opposed the application. He submitted that the Accused Person is a brother to the deceased and the witnesses are family members. He submitted that there was a possibility that once released, the Accused Person was likely to interfere with the witnesses.
5. The pre-bail report was filed on 14.11.2023.

**DETERMINATION**

6. I have considered the application, the submissions in opposition and the pre-bail report.
7. The Probation Report recommends that the Accused Person is not suitable for bond because his life will be in danger once released on bond/bail since the public is still very bitter about the incident. The Accused Person's family was not ready to receive him home. It further indicates that the Accused Person's wife was chased away by the Accused Persons' siblings. In addition, his siblings destroyed his



house and took everything. It would appear that the probation officer was not able to interview the victim as they were advised that the place was too hostile.

8. Article 49(1)(h) of *the Constitution* 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.
9. Section 3 of the *Bail and Bond Policy Guidelines* sets out the general principles that shall guide the process of bail and bond decision-making. They are as follows:-
  - a. The right of accused person to be presumed innocent.
  - b. Accused Person's right to liberty.
  - c. Accused's obligation to attend trial.
  - d. Right to reasonable bail and bond terms.
  - e. Bail determination must balance the rights of the accused persons and the interest of justice.
  - f. Consideration for the rights of victims.
10. Indeed, the primary consideration is whether the accused person will appear for trial if granted bail. (Section 4.9 of the *Bail and Bond Policy Guidelines*)  
Also see *Republic v Danford Kabage Mwangi* (2016) eKLR;
11. The following factors, which are by no means exhaustive, should be considered: -
  - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
  - b. The strength of the prosecution case.
  - c. Character and antecedents of the accused person.
  - d. The failure of the accused person to observe bail or bond terms.
  - e. Likelihood of interfering with witnesses.
  - f. The need to protect the victim(s) of the crime.
  - g. The relationship between the accused person and potential witnesses.
  - h. Child offenders.
  - i. The accused person is a flight risk.
  - j. Whether accused person is gainfully employed.
  - k. Public order, peace or security.
  - l. Protection of the accused person.
12. Indeed, Section 123A of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya, provides for the considerations that a Court should have in mind when considering an application for bail or bond. They are:
  - a. The nature and 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 fulfillment of obligations under previous grants of bail; and
- d. The strength of the evidence of his having committed the offence.
13. These conditions were restated in the cases of *Republic v Daniel Ndegwa Wachira* [2015] where Justice Mativo (as he then was) referred to the case of the Supreme Court in Nigeria in *Alhaji Mujabid Dukubo-Asari vs Federal Republic of Nigeria* SC 20A/2006; the Court of Appeal case of *Michael Juma Oyamo & Another v Republic* [2019] eKLR pronounced itself as such; and the case of *Mkirani v Republic* (Criminal Appeal E010 of 2021) [2021] KEHC 300 (KLR) (3 December 2021) (Ruling) where Justice Mativo (as he then was) referred to the case of the Supreme Court of India in *Krishnan v The People* {SCZ 19 of 2011}, {2011} ZMSC 17 which Court laid out similar conditions to be considered in an application for bail pending the hearing of an appeal.
14. In all these, the common denominator is that it is for the prosecution to establish the existence of these compelling reasons. See Paragraphs 23 and 28 of the Court of Appeal case of *Michael Juma Oyamo & Another v Republic* [2019] eKLR.
15. I agree with the finding in the case of *Oscar Edwin Okimaru v Republic* [2021] eKLR, where the Court held as follows:
- “ 20. Put differently, bail should not be refused unless there are sufficient grounds for believing that the accused will fail to observe the conditions of his release...”
16. From the Prosecution's submissions and the probation report, both indicate that the Accused Person's life will be in danger should he be released on bond or bail. Notably, the Accused Person did not dispute this.
17. Whilst the state has an obligation to protect all its citizenry, it would be foolhardy for this Court, nay, any court, to release an accused person where there is real evidence that the life of the said accused person would be in danger. In the present case, the facts speak for themselves and it is only right that the Accused Person's life be preserved by him being remanded in custody.
18. I am persuaded by the decision in *Rotich v Republic* [2022] KEHC 616 (KLR). In that case, the Court was faced with a situation where the accused person was charged with murder. The prosecution opposed his application to be released on bail/bond since there was a lot of tension between the family of the applicant and the neighbours which forced the applicant's family to vacate their land. The Court in that case held that the fear for the applicant's life was well-founded in view of the applicant's family being evicted from their land by irate neighbours.
19. I agree and adopt the rationale in the said case. The Applicant's family was evicted from their home, his house was destroyed and his property taken. That is indicative of a very hostile environment and indeed, there is a real likelihood that the Applicant's life would be in danger in released on bond/bail. In the circumstances, I find that the Prosecution has established a compelling reason to warrant this Court to decline the Accused Persons' application for bond at this stage of these proceedings.
20. In the case of *Rotich v Republic* (Criminal Case E007 of 2022) [2022] KEHC 616 (14 June 2022) (Ruling), the Court held as follows: -
- “ 12. ...Of course the ire is expected subside (sic) after some time but for now the risk to the Applicant's life is a compelling reason for denying him bond.”



21. In the same vein, I am convinced that the Accused Person's life is currently at risk as at now. The situation may change with time and should that happen, it will be handled as it arises.
22. The issue of interference of witnesses has not been established.
23. In the end, the Accused Person's application is dismissed. He shall be remanded in custody pending trial.
24. In the interests of justice, it is only fair that the matter proceed on priority basis. Hearing 8.2.24
25. It is so ordered.

**DATED, DELIVERED AND SIGNED AT KISII THIS 30<sup>TH</sup> DAY OF JANUARY 2024.**

**TERESA ODERA**

**JUDGE**

In the presence of:

Applicant

Mr. Koima for the State

Mr. Wesonga for the Accused Person/Applicant-Absent

Alex Oigo: Court Assistant

