



**Republic v Kinyua & 2 others (Criminal Case E013 of 2023)  
[2024] KEHC 363 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 363 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL CASE E013 OF 2023  
LW GITARI, J  
JANUARY 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN MAWIRA KINYUA ..... 1<sup>ST</sup> ACCUSED**

**ANTHONY KARIUKI MUGO ..... 2<sup>ND</sup> ACCUSED**

**MORRIS MURIUKI JACKSON ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The accused persons herein are charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) (Cap 63 of the Laws of Kenya).
2. As per the information dated 19<sup>th</sup> September, 2023, it alleged that on 20<sup>th</sup> May, 2023 at Mwonge location in Meru South Sub County within Tharaka Nithi County, the accused jointly with another not before court unlawfully murdered one Dickson Gitonga Machurai alias “Dika” (the “deceased”).
3. Presently before this court is the application by the 3<sup>rd</sup> Accused to be released on reasonable bail/bond terms pending trial. Also under consideration in this ruling are the two motions on notice dated 18<sup>th</sup> October, 2023 and 1<sup>st</sup> November, 2023 by the 1<sup>st</sup> and 2<sup>nd</sup> Accused respectively, both seeking the review of the ruling of this Court denying the release of the 1<sup>st</sup> and 2<sup>nd</sup> accused on bail/bond terms.
4. In the case of the 3<sup>rd</sup> Accused, he was arraigned before this Court on 18<sup>th</sup> July, 2023 and took plea the following day. He pleaded not guilty to the charge.
5. For the application by the 3<sup>rd</sup> Accused, Mr. Mbiu, counsel for the accused stated that the 3<sup>rd</sup> accused is a Kenya Defence Forces (KDF) officer based at the Laikipia Base. That he was brought by the officers at the said Base and is not a flight risk. The counsel further stated that the 3<sup>rd</sup> Accused has not been discharged from KDF and that he undertakes to attend court.



6. In opposing to the application, Ms. Mbithe, the prosecution counsel stated that when this matter started on 20<sup>th</sup> July, 2023, they were informed by the DCI that they were looking for the accused persons. That the 1<sup>st</sup> and 2<sup>nd</sup> accused appeared before the DCI but the 3<sup>rd</sup> accused remained at large and was trying to flee the country. Further, that there was a public outcry from members of the community and that the 3<sup>rd</sup> accused was subsequently brought to court under a warrant of arrest.
7. In response, Mr. Mbiu indicated to the court that the 3<sup>rd</sup> Accused comes from Laikipia and not the community where there were demonstrations in respect to this case. That the 3<sup>rd</sup> accused was all along at his work place in Laikipia Air Base and that his family is ready to stand surety for him.
8. 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.”
9. From the above constitutional provision, it is clear that bail is a constitutional right where one is awaiting trial. Notably also, the right to bail as provided under Article 49(1) of the [Constitution](#) is not absolute and it is at the discretion of the court. The burden lies on the prosecution to prove that there are compelling reasons to warrant the denial of bail/bond.
10. The general considerations in determining whether or not to grant bail are now contained in the [Bail and Bond Policy Guidelines](#) and Section 123A of the [Criminal Procedure Code](#). They include:
  - (a) The nature of the offence;
  - (b) Strength of prosecution case;
  - (c) Character of the accused and antecedents;
  - (d) Failure by the accused to observe previous bail or bond terms;
  - (e) Witness interference;
  - (f) Protection of the victim;
  - (g) Relationship between the accused and the potential witness(es);
  - (h) Whether the accused is a child offender;
  - (i) Whether the accused is a flight risk;
  - (j) If the accused is gainfully employed;
  - (k) Public order;
  - (l) Peace Security;
  - (m) Whether there is need for the protection of the accused.
11. It follows that the court may limit the right to bail/bond pending trial owing to certain compelling facts among them, if the accused is a flight risk, and if he is likely to interfere with witnesses and additionally, if his own life is at risk such that the victim’s family may revenge against such accused.
12. In this case, I have considered the application for bail by the 3<sup>rd</sup> applicant and objection raised by the Respondent in response. I have also considered the pre-bail dated 14<sup>th</sup> September, 2023 prepared by



Margaret Mugambi, a probation officer. The said report confirms that the 3<sup>rd</sup> accused is serving as a KDF officer based at the Laikipia Air Base. According to the report, villagers from the community from which the victim hails from have been staging demonstrations against the continued freedom of the 3<sup>rd</sup> accused and that it is his apprehension that calmed down the villagers. The probation report goes on to recommend that the 3<sup>rd</sup> accused person is a suitable case for consideration for release on bond subject to the discretion of this Court. I note that he is now charged and it is doubtful that he will continue staying at his KDF Base.

13. Despite the favourable recommendation, I agree with the submission by counsel for the Respondent that the application by the 3<sup>rd</sup> accused should be denied at this stage. For one, the temperatures on the ground were high because the 3<sup>rd</sup> accused was still at large and his release at this stage is highly likely to re-spark the public outcry. Secondly, 3<sup>rd</sup> accused should not be released due to concerns of his own safety. In addition, the explanation given on behalf of the 3<sup>rd</sup> accused as to why he did not honour the summons by the DCI officers is also wanting and raises doubt as to whether the accused, if released, will attend court as and when he is called upon to do so.
14. As for the applications by the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons for the review of their bail/bond applications, it has been argued that the temperatures on the ground have since cooled down. That the demonstrations by members of the public were based on the fact that the 3<sup>rd</sup> accused was still at large and that since his arrest, the demonstrations have ceased.
15. In the case for the 1<sup>st</sup> Accused, it has been argued by the Respondent that he is a flight risk as he alleges to have several places where he can stay. According to the Respondent, this implies that in case the 1<sup>st</sup> Accused absconds court, it will be extremely difficult to trace his whereabouts. Further, the Respondent has denied the contention that the 1<sup>st</sup> Accused is attached at the Nanyuki Battalion Base.
16. In the case of the 2<sup>nd</sup> Accused, it has been argued by the Respondent that he is also a flight risk. That despite being informed that he was required at the DCI Offices Meru South, he was intercepted and arrested at the Jomo Kenyatta International Airport (JKIA) where he was scheduled to fly to Amman Jordan in West Asia via Ethiopia. Further, that the accused is a person of means who will find a way to leave the country if he so wishes and as such, it will be difficult to trace him if he absconds.
17. Taking into consideration all the circumstances of this case, it is my view that the applications by the 1<sup>st</sup> and 2<sup>nd</sup> accused are not warranted. The situation on the ground has not changed since this Court gave its ruling declining to grant them bond.
18. From the foregoing analysis, it is my view that the application by the 3<sup>rd</sup> accused to be released on bail/bond terms and the applications by the 1<sup>st</sup> and 2<sup>nd</sup> accused for the review of the ruling on their applications to be released on bail/bond terms are all unmerited. The hearing of the matter can be expedited so that some of the witnesses heard before the accused can be released.

**Conclusion:**

I find that there are compelling reasons not to release the accused on bail. I order that the applications be dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**

**L.W. GITARI**

**JUDGE**

