



**Republic v Rotich & 2 others (Criminal Case E006 of 2023)
[2024] KEHC 748 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E006 OF 2023
F GIKONYO, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

EMMANUEL ROTICH 1ST ACCUSED

WILSON KIPRONO LANGAT 2ND ACCUSED

ISMAEL KIBET YEGON ALIAS MASTER 3RD ACCUSED

RULING

Bond/Bail Application

1. The prosecution opposed the release of the accused persons herein on bail. The accused persons are facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The 1st accused person did not file any replies.
3. The 2nd accused person filed a replying affidavit sworn by Wilson Kiprono Langat on 21/08/2023. The 2nd accused person averred that he does not know the identity of any witnesses in the case hence there is no possibility of interfering with witnesses. Furthermore, he is aware of the impacts of interfering with any witnesses. He has a fixed place of abode. He is also the sole breadwinner. He prays for reasonable bond terms.
4. The 3rd accused person submitted that no evidence has been presented before the court of any attempts by the accused person to interfere with any witnesses. The 3rd accused person relied on the case of [Republic Versus Patius Gichobi](#) and [Republic Versus Dwight Sagaray & 4 Others](#) [2013] eKLR.



5. The 3rd accused person submitted that the accused person never went into hiding. He is a mason and a carpenter within Olenguruone and was busy in pursuit of his basic needs. He has a permanent place of residence in the Olenguruone area.
6. According to the affidavits filed by the prosecution- sworn by PC Martin Mutwiri filed on 31/07/2023, and 26/07/2023 the following is a compelling reason not to release the accused on bond, to wit: -
 - i. Witness interference -that the accused persons are from the same village as the witnesses and some of the witnesses are colleagues at work to the accused persons.
 - ii. Flight risk- that the accused persons have all been on the run since they committed the offence until they were arrested at different times.

Analysis and Determination

Right to bail

7. All persons charged with a criminal offence are entitled to be released on bond on reasonable conditions except where there is a compelling reason not to be so released (article 49(1)(h) of Constitution of Kenya, 2010). This is based on the right to be presumed innocent until the contrary is proven (R. vs. Richard David Alden (2016) eKLR.)

Compelling reason and burden of proof

8. The prosecution bears the onus of proving compelling reasons under Article 49(1)(h) of Constitution - these are reasons that justify the limitation of the right to liberty in the context of Article 24 of Constitution .

Objective of bail

9. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial (Muraguri v Republic).

Grounds for objecting bond

10. The prosecution cited two grounds on which they opposed bail;
 - i) witness interference, and
 - ii) flight risk.

Interference with witnesses

11. The prosecution alleged likelihood of interference with prosecution witnesses. Interference with witnesses is an affront to, and impeaches the integrity of trial. Thus, justifiable reason to limit the right to liberty (R. vs. Patius Gichobi, article 24 of Constitution)
12. See also a work of the court in R. vs. Jaktan Mayende & 3 others, that:

“...In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of



law in general as envisioned by the people of Kenya in the Preamble to Constitution of Kenya 2010.....Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give skewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”

13. Therefore, the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond (R. vs. Dwight Sagaray & 4 others, 2013 eKLR)
14. The prosecution claims that some witnesses are colleagues of the accused and are likely to be interfered with by the accused.
15. The workplace relation makes such witnesses vulnerable to manipulation, harm, intimidation, harassment, tampering, blackmail, and abuse by the accused persons. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions or to extend a favour to their colleague.
16. This is a reasonable ground for refusal of bail until the vulnerable witnesses have testified.
17. Consequently, the prosecution has proved that the accused are likely to interfere with witnesses herein.

Flight risk.

18. In his affidavit, PC Martin Mutwiri avers that the accused persons are flight risk; they have all been on the run since the commission of the offence until their arrest at different times. According to them, they cannot be trusted to attend court if they are granted bond by the court. This argument is neither here nor there, for no evidence has been tabled before this court which gives the argument the power and grace, say, that the accused went into hiding to avoid the hand of the law. Merely that they were arrested at different times is not necessarily proof of flight-risk. The ground is rejected.

Conclusion and Orders

19. In conclusion, the court finds there is likelihood of interference with witnesses. This is a compelling reason not to release the accused persons on bail. They will remain in custody during the hearing of the case. In light thereof, this court directs the hearing of the case to be fast-tracked.
20. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 25TH DAY OF JANUARY, 2024.

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HON. F. GIKONYO M.

JUDGE

In the presence of:-

1. Accuseds
2. M/s Lepore for 2nd accused
3. M/s Nchoe holding brief for M/s Kool for 1st accused



4. M/s Rakama for DPP

