



**Kabui v Republic (Criminal Case E023 of 2021)
[2024] KEHC 2101 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E023 OF 2021
CW GITHUA, J
FEBRUARY 29, 2024**

BETWEEN

PETER KARIRA KABUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant (hereinafter the accused) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
He denied the charges and on 9th February 2022, through his advocate, he applied for his admission to bail or bond pending trial.
2. The application was contested by the prosecution on two fronts; First, it was claimed that if released, the accused's safety would not be guaranteed due to hostility from members of his community and secondly, that he was going to interfere with one of the prosecution's key prospective witnesses who was his young son.
3. The application was argued before Hon. Kimondo, J and in his ruling, the learned judge held that the prosecution had established existence of compelling reasons to justify denial of bond to the accused given the close familial relationship between him and the proposed prosecution witness and there was real likelihood that if released, the accused would interfere with the said witness.
4. In the current application, the accused invites this court to review the above ruling by Kimondo J and proceed to admit him to bond on reasonable terms pending his trial.
5. The application is premised on the grounds stated on its face which are replicated in the affidavit sworn by the accused in support of his application.



In the affidavit, the accused deposed that he was ready to abide by all conditions the court may impose as pre-requisites for his release on bond and pledged that if released, he was not going to interfere with his son as he was now an adult and was no longer vulnerable to intimidation.

6. The application is contested through the replying affidavit sworn by Cpl. Joseph Mungai, the investigating officer. The affidavit reveals that opposition to the application is two pronged:

First, it is averred that if released, the accused's life would be in danger as the deceased's family members were yet to heal from the emotional wounds caused by the loss of their loved one and secondly, that the deceased was accused's wife and if realised, he was going to interfere with the prosecution's key witness who was his son.

7. To counter the claims made by the prosecution, the accused swore a supplementary affidavit on 27th November 2023 in which he undertook not to interfere with his son if his application was successful. He also offered to relocate from his home where his son was residing and to live with his brother in Nairobi's Kayole Estate during the pendency of the trial to avoid contact with his son.

8. The court called for filing of a fresh pre - bail report and the same was filed on 19th September, 2023.

A reading of the pre-bail report confirms that the deceased in this case was the accused's wife and mother to one of the potential prosecution witnesses.

The report also confirms that the hostility previously expressed against the accused by members of the victim's family and his community at large had now ceased but there was still concern that if released, he was going to interfere with his son's evidence.

9. Having considered the application, the two affidavits sworn by the accused in support thereof and the affidavit sworn by the investigating officer in opposition thereto as well as the pre-bail report, I find that although the accused has maintained that his son was now an adult and was capable of giving independent evidence without intimidation, this may not be the factual position. Though the actual age of the said witness has not been disclosed, the pre-bail report shows that he was still a student in form three which in my view suggests that he was still vulnerable and susceptible to his father's influence.

10. Granted, under the current constitutional dispensation, all offences including capital offences like murder are bailable. But it should not be forgotten that Article 49 (1) (h) of the constitution though guaranteeing the right to bond pending trial makes the exercise of that right subject to existence of compelling reasons. To date, I am not aware of any standard measure or scientific method of determining what amounts to compelling reasons as that will depend on the unique circumstances of each case.

However, the Court of appeal in Michael Juma Oyamo & Another V Republic (2019) eKLR has offered guidance on this by defining the term "compelling reasons" as follows;

"The term compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the constitution....."

11. As noted earlier, the gravamen of the prosecution's objection to accused's admission to bail in this case is that, if released, there was a high likelihood that the accused would interfere with one of their potential witnesses who was his biological son. The accused in his supporting and supplementary



affidavits has not denied that his son was indeed a witness in this case but has denied that if released, he would interfere with his evidence.

12. In my considered view, given the close familial relationship between the accused and the said witness and considering that the witness was young and still in school and did not apparently have a good social support system given that he lived alone, I find that if released, the accused being his biological father was likely to interfere with his evidence irrespective of where he lived.
13. In the premises, I find that admitting the accused to bond at this stage may prejudice the prosecution case and derail the cause of justice. Consequently, I decline to allow the application for now but the accused may renew the same after his son has testified.
14. Having found as I have above, I find that it would be just to have the accused's trial expedited and I therefore direct that hearing dates in this case be taken on a priority basis.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 29TH DAY OF FEBRUARY, 2024.

C.W GITHUA

JUDGE

In the presence of :

The accused.

Ms. Muriu for the respondent

Ms. Susan Waiganjo Court Assistant

No appearance for Ms. Mukami for the Accused

