



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kathawe & another (Criminal Case E064 of 2023)
[2024] KEHC 2142 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E064 OF 2023
EM MURIITHI, J
FEBRUARY 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

CATHERINE NKATHA KATHAWE 1ST ACCUSED

SILAS KARANI 2ND ACCUSED

RULING

1. The 1st Accused is a 53 year old mother of seven children charged together with her 15-year-old son over the murder, contrary to section 203 as read with 204 of the [Penal Code](#), of her sister-in-law in particulars set out in the charge as follows:

“(1) Catherin Nkatha Kathawe(2) Silas Karani: On the 10th day of September 2023 at Kauchwa village Urru sublocation, Miathene location in Tigania West Sub County within Meru County jointly with others not before the court murdered Peninnah Kalayu.”

2. For his minor age, the 2nd accused was granted bail on a bond executed by his sister Joy Kangai in the sum of Ksh.100,000/-.
3. The DPP opposes bail for the 1st accused and the Investigating Officer CPL Samwel Kona has filed an affidavit in opposition to bail sworn on 26/1/2024 raising three principal concerns that the 1st accused is a flight risk, she is likely to interfere with prosecution witnesses, and for her own security her safety is not guaranteed owing to hostile ground where the accused lived in the same neighbourhood with the family of the deceased.
4. A Pre-bail Probation Officer’s report dated 18/12/2023 had noted that community members were not in opposition to grant of bond to the 1st accused but, citing the grieving of the victim’s family who felt



“it is too soon’ for their aunt to be released”, recommended that “the accused person remain in custody until the tempers of the victim’s family members cool down. This is because she is likely to be attacked on retaliation by the relatives of the deceased person who are still mourning their kin.”

5. In response to the DPP’s intimated opposition to her bail, the 1st accused by Replying affidavit sworn on 16/1/2024 denied that she was a flight risk having been arrested within her area of residence and that her safety is guaranteed “by the fact one of my siblings who resides in Laikipia has offered to host me until conclusion of these proceedings.”
6. Counsel for the 1st Accused and for the DPP then made oral submissions before the court and ruling was reserved.

Likelihood to abscond

7. It was alleged by the Investigation Officer that the “the accused is a flight risk. The offence was committed on the 10th day of September 2023 and the accused was arrested on the 11th day of September 2023 at Athwana Location while on her way to Isiolo County.”
8. The DPP submission of flight risk is rebutted by the Prosecution’s own evidence which is presented as proof. The 1st accused is shown by OB. NO. 34/11/09/2023 attached as SK4 to the affidavit in opposition to bail, to have been arrested on the very next day after the incident when she surrendered to a chief, as follows:

“OB 34/11/09/2023: At 22:40 Hrs PRISONER IN: CPL Manyao, PC Abuga, PC Salome, PC Lemangóle, PC Otieno, PC Disi, PC Shalle and PC (dr.) Mbabu all now report back to the station from matiru Sublocation in Athwana and bookin one murder suspect namely Catherine Nkatha Kathawe vide report report OB22/10/09/2023. The suspect was collected from the area chief Matiru Titus Thiaine at his residence in Matiru where he suspect had gone to surrender after the murder incident. She is now searched and placed in to the cells by PC (w) Salome Ncekei while appearing normal and with no complaint.

Signed.”

The 1st accused is not shown to be a flight risk.

Interference with witnesses

9. Interference with prosecution witnesses or investigations making it difficult for the DPP to execute its prosecutorial mandate is obviously a compelling reason. However, the fear of likely interference with witnesses or investigations ought to be supported by evidence of contact by the accused or her proxy with the prosecution witnesses or evidence. There was an allegation that some of the co-suspects who are at large had made threats on a prosecution witness Franklin Mwika but the relevant OB No. 20/15/09/2023 extract was not attached to the Affidavit in opposition to bail.
10. There was no alleged contact between the 1st accused and the prosecution witnesses and alleged interference by alleged co-suspects who are at large cannot be visited on the 1st accused. It is simply not her deed, and in any event if the alleged suspects are at large, holding the accused in continued detention does not stop their interference.
11. There was allegation that “there are other suspects who are still at large, whereas two suspects namely Gaichuma Prudence and Duncan Mwirigi were lastly located through their mobile phones on the 27th day of September 2023 to be in Adungosi in Busia County, which is near the Kenya -Uganda



Border”. It was not demonstrated that the 1st accused’s release on bail would likely interfere with the investigations leading to the arrest of the alleged fugitives.

12. In the end, the Court does not find a compelling reason within the meaning of Article 49 (1) (h) of *the Constitution* to justify denial of bail in this case.

Orders

13. Accordingly, for the reasons set out above, the Court makes the following orders:
1. The 1st Accused is admitted to bail pending trial upon terms set out herein.
 2. The 1st Accused shall execute a bail/bond of Ksh.200,000/- with one surety, or Ksh.100,000/- with two sureties, of the same amount.
 3. The 1st accused shall not visit the area of the killing at Kauchwa village Urru sublocation, Miathene location in Tigania West Sub County within Meru County.
 4. The 1st accused shall report to the DCIO meru every 30 days until the conclusion of the trial or further orders of the Court.
 5. The 1st accused shall not communicate with any of the Prosecution witness directly or by proxy, by physical or any telecommunication means, until the conclusion of the criminal trial herein.
 6. The Prosecution is at liberty to seek the cancellation of the bail in the event of changed circumstances or any breach of the terms of bail herein.
14. Mention for directions as to hearing on 19/6/2024.
15. Order accordingly.

DATED AND DELIVERED ON 29TH DAY OF FEBRUARY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Masila for DPP.

Mr. Mageria for the Accused Persons.

