



**Wachira v Republic (Criminal Case 22 of 2020)
[2024] KEHC 2096 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 22 OF 2020
CW GITHUA, J
FEBRUARY 29, 2024**

BETWEEN

DAVID NJANE WACHIRA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, David Njane Wachira, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The court record shows that the accused first applied to be admitted to bond pending trial on 29th September 2020 soon after he took plea and denied the charges. However, his application was subsequently withdrawn by his advocates on record following the filing of an unfavourable pre-bail report.
3. In his current application presented through a Notice of Motion dated 16th November 2022, the accused contends that the circumstances which led to the filing of an unfavourable pre- bail report have now changed and that currently, there were no compelling reasons to justify denial of his constitutional right to bond or bail pending trial. He further asserted that he has a fixed abode in Thika which is far away from the locus in quo and that if released, his safety will not be jeopardized.
4. In addition, the accused averred in his supporting affidavit that he has a right to be presumed innocent until proven guilty; that he was not a flight risk and was willing to abide by all conditions the court may impose as a pre-condition to admitting him to bond. He also pledged not to contact or interfere with prosecution witnesses if his application was allowed.
5. The respondent through the investigating officer Inspector Titus Nzioka swore a replying affidavit on 27th April 2023 opposing the application on grounds that the victim’s family and other prosecution witnesses had expressed reservations about being able to testify against the accused if he was out on



bond as they feared he may hurt them. The respondent also implied that the accused was a flight risk since he ran away after the deceased was killed and was arrested on 28th August, 2020.

6. In response, the accused swore a supplementary affidavit dated 15th May, 2022 in which he denied the prosecution's claim that he had gone underground after the incident and swore not to interfere with the witnesses. He invited the court to note that he had not attempted to interfere with the witnesses for the three years he had been in custody.
7. On 24th April 2024, I called for a fresh pre - bail report which was filed on 8th August 2023. The findings in the report confirm that there is still hostility towards the accused on the ground as ascertained from the local administration who warned that if released, accused's safety will be in danger. The report also confirmed the prosecution's claim that the accused may be a flight risk since he fled from the area the offence was allegedly committed and that the accused and the prosecution's potential witnesses hailed from the same village and accused's presence amidst them would instil fear in them and prevent them from testifying.
8. It is trite that under Article 49 (1) (h) of *the Constitution*, an arrested or accused person has a right to be admitted to bond on reasonable terms unless the prosecution demonstrated to the satisfaction of the court that there were compelling reasons that militated against grant of that right.
9. So far, i am not aware of a universal test or standard measure to determine what amounts to compelling reasons. This will have to be determined on the facts and circumstances of each case but generally speaking, compelling reasons would refer to rousing, cogent and plausible reasons that convinces the court that for justice to be done, the accused must be denied bond.

Therefore, an application for bond should not be denied on the basis of flimsy grounds or unsubstantiated allegations.

See: *R. v Jokten Mayende & 3 others* [2023] eKLR; *Michael Juma Oyamo V Republic* [2019] eKLR.

10. Section 123 A of the *Criminal Procedure Code* as well as the *Judiciary Bond and Bail Policy Guidelines 2014* provides a legal and policy framework containing reasons which if substantiated may amount to compelling reasons to justify denial of bond. These includes *inter alia*, interference with investigations or prosecution witnesses; the likelihood of the accused committing or abetting commission of a serious offence or endangering the safety of victims of the crime; accused's safety and the public interest.
11. That said, the all encompassing consideration that a court should have in mind when deciding whether or not to admit an accused to bond is whether the accused will turn up for his trial or was likely to abscond.

In this case, though the prosecution implied that if released, the accused was likely to abscond given that he had fled from the locus in quo and was arrested later on 28th August, 2020, it is clear that this was not the main reason the prosecution relied on in its opposition to the accused's application.

12. In my view, the thrust of the prosecutions' objection to admission of the accused to bond was that if released, the accused was likely to interfere with its key witnesses who were his village mates and or members of the victim's family. This claim finds support in the pre - bail report which confirmed that the accused had a reputation of being a violent and aggressive man who was feared in his community and if he was released and went to live in the same place, prospective prosecution witnesses would fear testifying against him. It was also indicated in the report that to date, the victim's family and other members of the community were still hostile against the accused and if released, his life may be in danger.



13. Though it is naturally expected that the victim's family would be angry and bitter about the loss of their loved one and I really empathise with them, it must be remembered that the accused still enjoyed the constitutional guarantee of being presumed innocent until proved guilty.
14. The accused has averred that if released, he will not go back to Kamaguta village but will reside in Thika which is far away from the scene of the alleged crime and that therefore, he will not have any contact with the witnesses or the victim's family.
15. The accused's claim that he has a fixed abode in Thika finds support in the pre-bail report and it is also not disputed by the respondent. Taking the above into account, I find that the prosecution's apprehension that if released the accused is likely to interfere with its witnesses and that his safety may be compromised does not constitute compelling reasons to warrant denial of bond to the accused in this case since the said apprehension can be taken care of by the imposition of appropriate bond terms.
16. In view of the foregoing, I find merit in the application and it is hereby allowed on the following terms:
 - i. The accused will be released upon executing his personal bond of Kshs. 500,000 together with one surety of like amount. The surety will be approved by the Hon. Deputy Registrar of this court.
 - ii. Once released, the accused will not reside in Kamaguta village and will not make any contact or interfere with the victim's family and the potential prosecution witnesses whether directly or indirectly.
 - iii. The accused will attend this court whenever required.
 - iv. In default of compliance with any of the above conditions, accused's bond will be cancelled.

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

C.W GITHUA

JUDGE

In the presence of :

The accused

Mr. Mwangi Ben for the accused

Ms. Muriu for the State

Ms. Susan Waiganjo Court Assistant

