



**Republic v Kiparus & 2 others (Criminal Case E017 of 2022)
[2024] KEHC 1803 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E017 OF 2022
F GIKONYO, J
FEBRUARY 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NOONGUTA KIPARUS 1ST ACCUSED

DOREEN CHEPUKEL 2ND ACCUSED

MARGARET TIYO 3RD ACCUSED

RULING

Review of Bond/Bail terms.

1. Before the court is application dated 20.11.2023 seeking review, variation, or setting aside of the ruling dated 15.02.2023, and admit the applicants to bail pending trial.
2. The application is expressed to be brought under article 25, 49, 50(1)(2) (b-h), 165(7) of *the Constitution* of Kenya, section 123 (1)(2), and 124 of the *Criminal Procedure Code*.
3. And. is based on the grounds set out in the application and the supporting affidavits sworn by the applicants on 20.11.2023.
4. The applicants were on 03.11.2022 charged with the offence of murder and have been in custody since then.
5. In a ruling dated 15.02.2023, the applicants were denied bail on the basis of likelihood of interfering with a witness who is a minor.
6. The court directed that the matter be fast-tracked in order not to jeopardize the applicants' right to bail.



7. The applicants contend that it is now over a year and the hearing of the matter is yet to take off and not for reasons attributed to the applicants.
8. The applicants argued that circumstances have since changed and current information together with the grounds adduced earlier are in favour of the review of the applicants' ruling on bail.
9. The applicants averred that the minor mentioned by the victim's counsel does not stay with the father but an uncle, living away in Transmara where she attends school. They stated that, the niece of the deceased who swore an affidavit whose averments were relied upon by this court in the ruling on bail, does not stay in their area.
10. The applicants contend that they are mothers of children of varying ages who require their care and attention.
11. The applicants averred that they are willing and ready to abide by such conditions as the court may deem fit for their release on bail.
12. In response to the application, Naserian Ngeeti filed an affidavit in opposition to the bond sworn on 04.12.2023. The deponent averred that Veronica Timpiyan, a minor and a key witness in this matter concluded her Kenya primary school education assessment (KPSEA) on 01.11.2023 at Sirua Aulo Primary School where she was a full boarding pupil. The minor does not live nor has she ever lived with any uncle in Transmara as alleged by the applicants. Having closed school for the December holidays Veronica Timpiyan now stays with her other siblings at their home in Oloiren village. The deponent averred that the timing of this application is suspicious considering the minor is on holiday until January 2024. The dependent argued that the second pre-bail report on the whereabouts of witnesses and the statements in the application and affidavits remain mere allegations that are one-sided and designed to sway this court into granting the applicants' bond.
13. Mr. Oyori orally submitted that the accused persons should not be punished before conviction. He contends that no material has been placed before the court to support the claim of witness interferences. He stated that the prosecution is not opposed to the accused persons being released on bond. He urged this court to strike a balance to ensure the trial is not impeded while the accused gets liberty as the trial continues. He further urged this court to exercise discretion and release the applicants.
14. Ms. Lepore orally submitted that they rely on the affidavit filed.
15. Mr. Ondimu orally submitted that he could not understand why the matter should not proceed. He stated that the investigating officer had not indicated any interference with witnesses. No report of interference from witnesses whatsoever.

Analysis and Determination

16. Inter alia: -

‘In an application for review of the denial of bail, the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.’ (*Republic Vs. Francis Maina Wairimu* (2020) e KLR).



17. And: -

‘The changed circumstances test is one of a common sense... to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large...’
(*Republic Vs Diana Suleiman Said & Another* (2014) e KLR)

18. The accused persons have averred that the minor does not stay in the same area with the accused persons- a fact which has been disputed. According to the victim family, the minor just completed KAPSEA and lives at home with her other siblings. Where ‘changed circumstances’ has been claimed, it should not be left to doubt. Likelihood of interference with the said witness- a minor- has not dissipated.

19. Nevertheless, this court is mindful to take a course that facilitates rather than impedes enforcement of a right as commanded in article 22 of *the Constitution*. Accordingly, the minor shall give her testimony sooner rather than later. A date for hearing of her testimony shall not be later than 14 days from today. Once, the minor has testified or upon any further directions of the court, the accused persons shall be released on bond upon such terms as the court shall determine. The Notice of Motion application dated 20.11.2023 is accordingly dealt with,

20. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 28TH DAY OF FEBRUARY, 2024.

Hon. F. Gikonyo M.

Judge

In the Presence of: -

Court Assistant - Otoro

M/s Rakama for ODPP – Present

Nyabochwa for accused – Present

Nchoko for family - Present

