



Republic v Githii (Criminal Case 1 of 2023) [2024] KEHC 2784 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 1 OF 2023
DR KAVEDZA, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL NDUNG’U GITHII ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 (Cap 63) Laws of Kenya. The particulars of the offence are that on 23rd September 2023 at about 11.30 am at Mutuini-Adonai area, in Dagoretti Sub-County murdered Ayub Kamuyu. The accused took plea and pleaded not guilty to the offence of murder.
2. He has now approached this court seeking to be released on reasonable bail/bond terms pending his trial.
3. In response, PC Fred Ambasa filed an affidavit dated 18th October 2023 to oppose bond. The averments made were that after the commission of the offence, the accused fled from the scene of crime. The prosecution witnesses in this case are well known to the accused being his neighbours. There was a high likelihood that if released, he would threaten, intimidate, coerce, interfere or influence the said witnesses since he is a licensed firearm holder. In addition, the accused’s life is in danger from members of the public who attacked him prior to his arrest and vandalized his property. It is therefore in his best interest that he be denied bail/bond for his safety and public peace. He urged the court to dismiss the application for bail/bond pending the hearing and determination of the case.
4. In response, the accused admitted that indeed his family and himself were attacked by members of the family after the alleged incident. They had to seek refuge at their relatives premises which has been a great inconvenience. He urged the court to admit him to reasonable bail terms.



5. The parties filed written submissions, in support and in opposition to the application. I have considered the application, the response, the written submissions and the applicable law. The issue for determination is whether there are compelling reasons to deny the accused reasonable bail/bond terms.
6. Article 49(1) (h) of the Constitution guarantees the right of an arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released. The onus of proof in bail applications in respect of compelling reasons is borne by the state under section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya. The right for an accused person to be released on bail is not absolute.
7. In determining whether the interest of justice dictates the exercise of discretion under Article 49 (h) of the Constitution, the courts are to be guided by the provisions of section 123A of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides:

“In such a determination the courts are to factor the following exceptions to limit the right to bail;

 - (a) Nature or seriousness of the offence;
 - (b) The character, antecedents, associations, and community of the accused person;
 - (c) The defendants record in respect of the fulfilment of obligations under previous grant of bail;
 - (d) The strength of the evidence of his having committed the offence:

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person;

 - (a) Has previously been granted bail and has failed to surrender to custody if released on bail, it is likely that he would fail to surrender to custody;
 - (b) Should be kept in custody for his own good.
8. The constitution specifically requires under Article 49 (h) of the the Constitution that the terms of bail to be attached to an accused who is released on bail shall be reasonable. Besides the exceptions limiting the right to bail under section 123A of the Criminal Procedure Code, Article 49 (h) of the Constitution places the burden of proof on the state to demonstrate compelling reasons. It is therefore upon the prosecution to prove that there are compelling reasons why the accused should not be released on bail.
9. In opposition to the application for bail/bond, the investigating officer claimed that there was a likelihood that the accused will interfere with witnesses being a licensed firearm holder. He claimed that the prosecution witnesses are his neighbours and well known to the accused and there was a reasonable apprehension of coercion, intimidation and interference. On his part the accused undertook not to interfere with prosecution witnesses. The prosecution also claimed that the accused should remain in custody for his own safety.
10. From the record, no evidence was placed on the alleged interference of prosecution witness. In the absence of such evidence, his averment that made by the prosecution are speculative in nature. I therefore reject his averments for that very reason.



11. The pre-bail report on record, indicated that the applicant is a businessman in Nairobi. That members of the community are opposed to his release on bond. That the matter is still fresh and there is an outcry from the community due to gravity of the issue and tempers are yet to cool down. That the family of the deceased appeared highly traumatized by what transpired and would like the judicial process to determine the issue.
12. The circumstances in which the accused finds himself that his life is threatened by the community where he resides will be a deciding point in the accused application for bail. The probation report is very clear that the community is unwelcoming to the accused being released on bail. The impression that the court gets from the probation report is that the accused may very well suffer harm from the community. Accordingly, that is a sufficient basis of denying the accused bail pending trial. The accused is denied bail for his own safety.
13. Accordingly, the accused application for bail is dismissed. The accused case will as far as possible be fast tracked since the accused will until further orders of this court be remanded in custody pending his trial. The application may be revisited in future when the said hostility has died down.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MARCH 2024

D. KAVEDZA

JUDGE

In the presence of:

Ms. Muigai for the Accused/Applicant

Ms. Parklea for the Respondent

Joy Court Assistant

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