



**Republic v Owaga (Criminal Case E052 of 2022)
[2024] KEHC 3347 (KLR) (Crim) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E052 OF 2022**

**K KIMONDO, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NELSON MANDELA OWAGA ACCUSED

RULING

1. The accused seeks review of the ruling made on 28th October 2022 denying him bail.
2. His notice of motion is dated 20th November 2023 and is three-pronged: Firstly, that he will now reside with his father at Rodi Township, Kanyago Sub-Location, Aseso East Division of Kisumu County as detailed in the letter from the chief dated 20th July 2023. Secondly, that he does not hold a travel passport and is thus is not a flight risk. Thirdly, that he shall abide with any terms for his release including periodic reporting to the investigating officer.
3. The motion is fervently contested by the Republic. There is a replying affidavit sworn by Corporal Nickson Kavila on 13th February 2024. In a synopsis, he avers that after the incident, the accused went underground and was arrested on the way to Tanzania. Secondly, that in view of the testimony at the trial, the instincts to escape are now heightened; and, lastly, that the testimony from a vulnerable minor has not been taken.
4. On 7th March 2024, I heard further submissions from both learned counsel for the accused and the Republic.
5. I take the following view of the matter. Under Article 49 (1) (h) of the *Constitution*, the accused is entitled to bail unless there are compelling circumstances. Further, by dint of Article 50 (2)(a), he is also deemed innocent until the contrary is proved.



6. The overarching objective of bail is to ensure the accused attends trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported), *R v Fredrick Ole Leliman & 4 others*, Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
7. I find that the application for review is unmerited for the following reasons. Firstly, and, from the letter of the chief above-mentioned, I am satisfied that John Owaga, the father of the accused, has a permanent residence at Rodi Township, Kanyago Sub-Location, Aseso East Division of Kisumu County. However, the accused is an adult who cannot be under the full control or supervision of his father.
8. Secondly, the alleged offence took place at Gatwekera area in Kibera slums, Kibera Sub-County within Nairobi County. There has been no meaningful rebuttal to the averments by Corporal Kavila that soon thereafter, the accused escaped and was apprehended days later at the Tanzanian border.
9. Thirdly, it may be true that he does not hold a travel passport. But I take judicial notice that movement across the East African Community by its residents may not require such a document.
10. Fourthly, the court has now heard three witnesses in this case. It bears repeating that the accused is still deemed innocent. But the court remains alive that a vulnerable witness is as yet to testify. In the impugned ruling, I stated as follows-
 - (6) Two witnesses have already testified in this matter. One of the remaining witnesses is a minor, who according to the replying affidavit, resides in the same vicinity as the accused. The likelihood of interference with such a witness is thus not far-fetched.
11. Those risks still remain. It may be true that the relationship between the accused and the mother of the minor was casual, or, that it has since been terminated. But that does not fully cure the danger of interference with the evidence.
12. Furthermore, granted the grave charge and the stage of the trial, I also find that the temptation and likelihood to abscond remains high.
13. I empathize with the accused but find that no good cause has been shown for review. The upshot being that the notice of motion dated 28th November 2023 is hereby dismissed. The trial shall continue to be fast-tracked.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Ms. Mburukua holding brief for Mr. Kiptunge for the accused instructed by Kiptunge Collins & Company Advocates.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

