



**Republic v Ndolo (Criminal Case E056 of 2023)  
[2024] KEHC 4561 (KLR) (Crim) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4561 (KLR)

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

**CRIMINAL  
CRIMINAL CASE E056 OF 2023**

**LN MUTENDE, J**

**APRIL 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DOMINIC NDOLO ..... ACCUSED**

**RULING**

1. Dominic Ndolo, the accused (applicant) is charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence being that on 12/8/2023 within Pipeline area in Embakasi Sub County jointly with others not before court, murdered Amos Muthoki Mackenzie.
2. Pursuant to an accused person’s constitutional rights, the accused seeks to be released on bond pending trial on reasonable terms.
3. The application is opposed by the State through the Investigating Officer P.C. Allan Mpaima who per his affidavit dated 29/8/23 depones that: the applicant faces a serious offence and that there is irrefutable evidence against him; the accused is likely to abscond considering the evidence against him and on further fear of the sentence if found guilty; the accused has not demonstrated that he has a place of residence where he could be traced if released on bond; he was living in a rental house and does not have gainful employment.
4. Further that the accused is likely to interfere with prosecution witnesses hence bond should be denied until eye witnesses testify since his release before this testimony would jeopardize the case.
5. The application was canvassed through written submissions. Through the firm of Matio Kamau advocates, it is submitted that the accused is willing to vacate his place of residence. That the



- prosecution have failed to demonstrate actual or perceived interference, show threat or existence of threat to witnesses.
6. That there is no close familial relationship between the accused and the witnesses. And that the prosecution have not shown direct or indirect incriminating communication between the accused and witnesses.
  7. Reliance was placed on the case of *Dwight Sagaray -vs- Republic* and *Richard David Alden -Vs- Republic* 2016 eKLR. It is also submitted that mere relationship especially one which is not filial does not suffice to prove interference. That the prosecution merely speculate that the accused will threaten the landlord.
  8. On whether the accused is a flight risk, it is argued that the fact that other suspects are at large is not a ground to deny him bond. That the prosecution has a duty to trace the suspects.
  9. That the prosecution must show that the accused attempted to go away and had made such arrangements. That the accused instead went to report the theft of his property and later honoured the call by the police officer .
  10. There is no evidence of unrest and there is nothing to prove that the accused attempted or intends to interfere with the criminal justice system and how the public has been agitated.
  11. Praying for reasonable bond terms it is stated that the accused is a casual laborer who pays fees for his sister, and takes care of his mother and grandmother.
  12. A pre-bail report was filed which captures views of the accused, victims and the community. further to the application, the accused acknowledges the seriousness of the offence and prays that the court considers granting him a free bond.
  13. That the accused plans to live in Ulinzi sub- location in Makueni County and would not do anything to compromise the integrity of the case.The accused mother prays for free bond and states that they come from a poor background
  14. The primary victim who was a caretaker at Neema apartments had previously worked with the accused at a butchery .They also shared a one roomed house prior to the deceased moving out. The deceased family oppose the application for bond and state that the accused is likely to flee and that his release may provoke the public.
  15. The area Nyumba kumi is also opposed to the application on ground that the accused has no fixed place of abode and that other accused are also at large.That the public are still angry and the accused life may be in danger .
  16. On the other hand the assistant chief of Ulinzi locaton where the accused currently resides vouched for his release on bond and stated that he knows the accused and his family although the administration has not interacted with the accused for a long period. That the accused would be housed by his mother who also promises to collaborate and ensure he attends court.
  17. The DCI Embakasi sublocation is not opposed to the release on bond as the accused is unlikely to interfere and also not a flight risk. In the result the probation officer recommends that the accused be granted bail /bond with strict conditions to address victim's concerns.
  18. Article 49 of the *Constitution* as read with Section 123 of the *Criminal Procedure Code* (CPC) provides that that any arrested or accused person is entitled to be released on bond pending determination of his trial.



19. Section 123 of the *CPC* provides that:
1. When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:
20. The right to bail is a fundamental right which can only be limited in a manner provided in law and where the prosecution proves existence of exceptional, convincing and forceful or compelling reasons to deny the accused bond.
21. In the case of *Republic -vs- Danson Mgunya & Another* (2010) eKLR Ibrahim J (as he then was) held that the principle that the liberty of accused should only be limited where there are compelling reasons not to be released and it is the duty of the state to demonstrate the same, and even then each case must be decided on its own circumstances, touch and context.
22. The main purpose of bond is to ensure the accused attends court. The court should liberally grant bond and also be seen to facilitate the accused fundamental right by granting reasonable terms.
23. In the case of *Andrew Young Otieno -vs- Republic* (2017) eKLR Kimaru J ( as he then was ) stated as follows as follows:-
- “ This court agrees with the Applicant that the purpose of imposing bond terms is to secure the attendance of the accused before the court during trial. The terms imposed by the trial court should not be such that it amounts to a denial of the constitutional right of the accused to be released on bail pending trial. The trial court must consider the circumstances of each accused when determining bond terms to be imposed. ....”
24. The accused is expected to benefit from the presumption of innocence until the case against him is proved to the required standard. The question of the case having overwhelming evidence is ordinarily establish at an advanced stage of the prosecution’s case.
25. The likelihood of the accused absconding trial on such a ground is speculative and not applicable at this stage but may be persuasive following cogent evidence being presented.
26. Similarly severity of the offence and sentence is a ground to consider but the court must also be reminded that incidences exist where accused charged with misdemeanors have absconded court.
27. See the case of *Republic -Vs- Danson Mgunya & Another* [2010] eKLR when M.K. Ibrahim J (as he then was) held thus:
- " 1. As a matter of fact, all other criteria are parasitic on the omnibus criterion on availability of the accused to stand trial. Arising directly from the omnibus criterion is the criterion of the nature and gravity of the offence. It is believed that the more serious the offence, the great incentive to jump bail although this is not invariably true. For instance, an accused person charged with capital offence is likely to flee from the jurisdiction of the court than one charged with a misdemeanour, like affray. The distinction between capital or non-capital offence is one way crystallized from the realization that the atrocity of the offence is directly proportional to the probability of the accused absconding.



But the above is subject to qualification that there may be less serious offences in which the court may refuse bail, because of its nature.”

28. As to whether the accused is a flight risk, contrary to the Investigating Officer’s claims, the accused has a fixed abode at Ulinzi sub- location in Makueni county where he hails from and also resides with his mother. Further, sureties and contact persons can be availed to resolve the investigating officer’s concerns that the accused would not be traced If released. The pr-bail report proves that the accused is eligible for bond and that the local administration where he currently resides vouches for his release.
29. The State has a duty to trace and arraign other suspects who are at large and the accused trial cannot be held at ransom pending such arrest. The accused should similarly benefit from the right to fair trial. His release on bail would not interfere with the investigations, arrest and arraignment of other suspects.
30. It is urged that the accused will interfere with witnesses. The crime took place in Pipeline Kware area where the accused and the deceased resided. The prosecution fears that the accused would interfere with witnesses. The accused former landlord has been cited as an eye witnesses to the act.
31. The accused on the other hand has demonstrated that he has relocated from Kware where the offence occurred and witnesses come from. The accused currently resides in Makueni County. If conditions are set It would be unlikely that the go against the court order.
32. As to whether the accused security would be at risk if released on bond, the State was required to demonstrate that the accused security was endangered at time of arrest and that this continues to be the case. The accused submitted that he personally reported the assault to the police station and went back when required until he was charged and arraigned. This meant that his life and movement was not restricted.
33. The upshot of the above is that the grounds put forth in opposition of grant of bail are speculative. Therefore, the accused is granted bond of Ksh 800,000/= with one surety in a similar sum.
34. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

In the presence of:

Accused

Ms. Ogweno for ODPP

Court Assistants – Habiba/ Fatuma/Hadija

