



**Republic v Thumbi (Criminal Case E022 of 2023)
[2024] KEHC 4407 (KLR) (Crim) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E022 OF 2023
LN MUTENDE, J
APRIL 30, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER IRUNGU THUMBI ACCUSED

RULING

1. Peter Irungu Thumbi, the Accused was arraigned in court following allegations of having committed the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that on the night of 31st March and 1st April, 2023, outside Zawadi Towers at Eastleigh Section 3 in Kamukunji Sub-County within Nairobi County jointly with others not before court murdered Harun Ibrahim Dahir. (Deceased).
2. Following the accused constitutional rights, as provided by Article 49(1)(h) of the *Constitution*, the accused sought to be released on bond pending trial, an application that was opposed by the State/ Respondent. This court considered the application and was persuaded that the reasons given for opposition to have the accused released on bond were cogent hence the accused was denied bail because he was likely to interfere with civilian witnesses and that he belongs to a certain criminal gang that attack and rob unsuspecting people within Eastleigh.
3. Through a Notice of Motion dated 8th December, 2023 the accused seeks to be released on reasonable bail/bond terms. The application is premised on grounds that: the accused lives with his parents and moreover has Kenyan contacts who are willing to stand surety for him in order to secure his attendance when needed by the court; he is the provider of his family which has remained ostracized and destitute for lack of financial contribution from him; evidence that the accused is likely to interfere with witnesses has not been tendered; he has a medical condition, coronal hypospadias which requires



medical attention that he is not likely to receive while in custody; he is not a flight risk; has a fixed place of abode and should be presumed innocent until proven otherwise.

4. At the hearing learned defence counsel, Mr. Swaka urged that the accused will keep peace if bail terms are reviewed and in case he breaches the terms the court will give further directions.
5. In response Senior Prosecution Counsel Ms. Ogweno submitted that the court in denying bail took into consideration the age, circumstances surrounding the case, the accused belonging to a gang, the likelihood of interference with witnesses and the fact of the accused having been a flight risk as he hid at their Murang'a home after the act.
6. Submissions by both counsel have been considered. The question of the accused being released on bail was determined by a ruling dated and delivered herein on 27th September 2023 where bail was declined. What is expected of the accused is to establish change of circumstances that require the accused to be released on bond.
7. The law provides for review of bail/bond terms by the court that is seized of the matter. The court does not become functus officio once bail is granted. In the course of trial, the court may deviate from orders granted, and, decrease or increase bail/bond. This depends on circumstances of each case.
8. In the case of *Republic vs. Diana Suleiman Said & another* [2014] eKLR that is persuasive, the court delivered itself as follows:

“... I do not agree that the review of bail on the ground of changed circumstances, or changes in the circumstances of the case, including circumstances of the accused, witnesses, victims or the society affected by alleged crime is a strange phenomenon. I would say our courts do it every day when we sit to consider renewed applications for bail such as when volatility on the ground is established to have ceased or for the cancellation of bail on account of accused's refusal to attend court while on bail, when sureties withdraw or for other reasons.

The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.

I find nothing in the provisions of Article 49 (h) of *the Constitution* or section 123 of the *Criminal Procedure Code* to suggest that the court once grant or refuse bail becomes functus officio...”

9. It is averred without proof that the accused has a medical condition. The only change of circumstances is the fact of the key witness having testified in the matter and the next hearing date being in the month of November 2024 whereby the interest of justice would call for the accused who remains innocent until proven guilty being released on bail per the constitutional requirement.
10. Therefore, I allow the application for review and grant the accused bond of Ksh 2,000,000/- with 2 Sureties in similar sum and upon being released;
 - a) The accused shall not interfere with witnesses directly or indirectly.
 - b) The accused shall avail a letter from the chief of his place of abode.



c) The accused shall not set foot in Eastleigh, Nairobi.

Orders accordingly.

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

L. N. MUTENDE

JUDGE

In the presence of:

Accused

N/A for Defence Counsel

Ms. Ogweno for ODPP

Court Assistant – Habiba/ Fatuma/Hadija

