



Republic v Rukia (Criminal Case 3 of 2023) [2024] KEHC 3943 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3943 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 3 OF 2023
DR KAVEDZA, J
APRIL 24, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SARAH RUKIA ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code* (Cap 63) Laws of Kenya, in respect of the deceased George Waiyaki Gichure alias Gesho. She pleaded not guilty to the charge. On 7th November 2022, this court dismissed her application for bail pending trial. She has filed the present application dated 29th January 2024 seeking a review of the orders of this court denying her bail. She prayed that she be released on reasonable terms as the court may deem fit.
2. The application is supported by an affidavit of a similar date sworn by the applicant. The averments made are that: She is the sole breadwinner of her family consisting of two children aged 5 and 10 years. She has a permanent residence in Kawangware 46. Prior to her arrest, she was a law-abiding citizen. Prosecution witnesses who were her close relatives or neighbours have since testified and are therefore not susceptible to interference. She urged the court to review its decision and grant reasonable bail/bond terms.
3. Having considered the application, the objection to the application, the written submissions of the parties, and the applicable law. The issue for determination is whether the court should review the orders denying bail and grant reasonable bail terms.
4. 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.

5. 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 defendant's 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.

6. the *Constitution* specifically requires under Article 49 (1) (h) of 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 (1) (h) of the *Constitution* places the burden of proof on the state to demonstrate compelling reasons.

7. In the instant application, the applicant was denied bail by this court on 7th November 2022. The reason for the denial of bail at the time was the likelihood of interference with witnesses. This is because some of the witnesses are closely related to her and others were her neighbours. This court was of the view that the applicant had not shown to have an alternative place of abode where she would not interact with the said witnesses until the conclusion of her trial. The issue is whether the applicant has established the existence of changed circumstances to warrant the grant of bail pending trial.

8. In *Republic v Francis Maina Wairimu* [2020] eKLR, Wakiaga J held that:

“In an application for review for 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”.

9. While the burden of proof with regard to changed circumstances may appear to fall on the accused as the applicant for bail review, it is a matter that falls for consideration under the general principle that an accused person is entitled to bail unless compelling reasons exist for refusal. Since the denial of bail in November 2022, the circumstances of the case have not changed. The compelling reasons for the denial of bail still exist. It is apparent to this court that the applicant has not established the existence of changed circumstances.



10. In the affidavit in support of the application, the applicant reiterated that she has a permanent residence in Kawangware 46, the same neighbourhood where the witnesses reside. She has not disclosed an alternative place of abode. From the record, only three of the prosecution's witnesses have testified. The threat of interference on the remaining witnesses is still real. Consequently, this court has no reason to interfere with the orders issued on 7th November 2022 on the denial of bail pending trial.
11. The upshot is that the application dated 29th January 2024 is dismissed for lacking in merit.
It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 24TH DAY OF APRIL 2024.

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D. KAVEDZA

JUDGE

In the presence of:

Mr. Waweru for the Accused/Applicant

Paclea for the State

Wilson Court Assistant

