



**Republic v Kirimi & 4 others (Criminal Case E001 of 2024)  
[2024] KEHC 7154 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 7154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E001 OF 2024  
DO CHEPKWONY, J  
MAY 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**VINCENT MURIITHI KIRIMI ALIAS SUPUU O’OMIORO ..... 1<sup>ST</sup> ACCUSED  
MURANGIRI KENNETH GUANTAI ALIAS TALI ..... 2<sup>ND</sup> ACCUSED  
BONFACE MURIITHI ALIAS DJ KABOOM ..... 3<sup>RD</sup> ACCUSED  
CHRISTUS MANYARA ALIAS CHRIS ..... 4<sup>TH</sup> ACCUSED  
BRIAN MWENDA ALIAS BRAYO ..... 5<sup>TH</sup> ACCUSED**

**RULING**

1. The Accused persons herein have been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of offence are that:-

“The Accused persons on diverse dates between 2<sup>nd</sup> December, 2023 and 6<sup>th</sup> December, 2023 at River Mutonga in Chiakariga Sub County within Tharaka County jointly with others not before court murdered Daniel Muthiani Benard alias Sniper.”

2. All the Accused persons pleaded ‘Not Guilty’ to the offence and through their Counsel filed various applications seeking release on reasonable bail and bond terms.

3. The 1<sup>st</sup> Accused person filed Notice of Motion application dated 5<sup>th</sup> February, 2024 which is based on the grounds as set out on the face of it and the Supporting Affidavit of Vincent Muriithi Kirimi, the 1<sup>st</sup> accused sworn on 15<sup>th</sup> February 2024. The 1<sup>st</sup> Accused person argues that he has been in custody



for more than 33 days since his first arrest and had developed abdominal pains arising from liver complications which he got while in custody. That he has a constitutional right to be released on bail and submits that there are no compelling reasons to deny him fair bail and bond terms. He avers that he is willing to abide by the terms the court shall give and will not abscond court. He added that he is not a flight risk and he urges the court to grant him reasonable bail and bond terms.

4. The 2<sup>nd</sup> Accused person as well filed Notice of Motion application dated 31<sup>st</sup> January 2024 which is also based on the grounds as set out on the face of it and the Supporting affidavit of Murangiri Kenneth Guantai, the 2<sup>nd</sup> accused hereto, sworn on 31<sup>st</sup> January 2024. His case is that he is innocent until he is proven guilty. That he has a right to bail and bond terms since there are no compelling reasons to deny him the bail terms. He avers that he has a fixed abode within Meru County and he does not pose any flight risk. That he has a gainful employment with good standing, with a wife and two children aged 9 years and 3 years respectively. He argued that he is the sole bread winner of his family and he is willing to cooperate with the authorities and abide by the terms given by the court if admitted and or released on bail.
5. The 3<sup>rd</sup> Accused person filed Notice of Motion Application dated 6<sup>th</sup> February 2024 in Kiambu HCCR No E002 OF 2024 which was later consolidated with this file. The Application is based on the grounds as set out on the face of it and the Supporting Affidavit of the 3<sup>rd</sup> Accused, Boniface Muriithi sworn on 6<sup>th</sup> February 2024. He equally avers that he is innocent until he is proven to be guilty, and there are no compelling reasons to deny him bail and bond terms. That he has a fixed abode in Meru County and therefore not a flight risk. He also states that he is his family's bread winner with his parents and siblings depending on him particularly his 16 year old sister who is in High school as he pays the school fees for her. He avers that he will abide by the terms and conditions given by the court and urged the court to admit him to bail and bond terms pending trial.
6. The 4<sup>th</sup> Accused person, Christus Manyara Kiambi filed an Affidavit in support of Bail/Bond which was sworn by himself on 16<sup>th</sup> February, 2024. He avers that his permanent address is Gikumene in Meru but due to his wife's employment in Nairobi he also maintains a residence in Kitengela and he is therefore not a flight risk. He confirms that he will cooperate with the authorities during the investigations and attend all court proceedings. That he is not familiar with any of the key witnesses and none of them have lodged any complaints or likelihood of interference. He as well reiterates that there are no compelling reasons to deny him bond. He maintained that he has strong ties with the community and family and he works as a communications officer in Meru County Government. He clarified that he does not hold any travel document making him incapable of fleeing the jurisdiction. He avers that since the matter has public interest, his uncle Josphat Thurairira has offered to shelter him in his home away from Meru Town and urges the court to grant him reasonable bail and bond terms.
7. The 5<sup>th</sup> Accused person, Brian Mwenda also filed an Affidavit in support of Bail/Bond which was sworn by himself on 16<sup>th</sup> February 2024. He holds that his permanent address of residence is in Kwa Mutea Iringo, bypass House No.1 where he resides with his wife and one year old daughter and he possess no flight risk. He avers that he is innocent until he is presumed guilty. He argued that he has consistently cooperated with the authorities since his arrest and will continue doing so if released on bail and assures that he shall also attend all court proceedings. The 5<sup>th</sup> accused added that he is not familiar with any of the witnesses and none of them has lodged any complaints against him or shown to have any personal connection with him. He as well avers that there are no compelling reasons to decline his application sating that he has strong ties with the family and community. According to the 5<sup>th</sup> accused he does not have any travel documents or passport hence incapable of fleeing the jurisdiction. He also states that his uncle, Isaac Gichunge, is willing to stand as his surety has offered to shelter him in his home in Ruai during the trial if he is admitted to bail and bond terms.



## The Responses

8. The prosecution relied on a Replying Affidavit sworn by No 236734 CI Clement Mwangi, one of the Investigating officers in the matter, which was filed opposing the release of the 2<sup>nd</sup> Accused person Murangiri Kenneth Guantai. It is averred that the 2<sup>nd</sup> Accused person is an administration police officer attached at the office of the Governor in Meru County Government and also a brother to Governor Kawira Mwangaza. Therefore, the 2<sup>nd</sup> Accused person being a resident of Meru, the situation in Meru is extremely hostile to any person who is suspected to have been involved in the murder of the deceased. Therefore, the release of the 2<sup>nd</sup> accused person at this stage would put his life at risk. Further, that since the 2<sup>nd</sup> Accused person, being a Police Officer in Meru is likely to instil fear and intimidate the prosecution witnesses some of whom are already facing threats and actual violence. A report of threats of prosecution witness and photographs of destroyed properties belonging to the witness was attached to the affidavit. The deponent avers that the 2<sup>nd</sup> Accused is on interdiction hence his release is likely to affect not only the interdiction but also the prosecution of the case. He holds that since the 2<sup>nd</sup> Accused is still on half pay salary hence family can access it for sustenance. He urges the court not to grant the 2<sup>nd</sup> Accused person bail until all civilian witnesses who are privy to the incident testify.
9. The same investigating officer No 236734 CI Clement Mwangi, also swore another affidavit on 29<sup>th</sup> February, 2024 opposing the release of the 3<sup>rd</sup> Accused person on bail/bond terms. He avers that the 3<sup>rd</sup> Accused person is a resident of Meru County and the residents therein are extremely hostile hence his release would put his life at risk. He further holds that the 3<sup>rd</sup> accused person worked as a DJ in numerous establishments and is also a host of a popular programme in Weru Television and he is likely to instil fear and intimidate the prosecution witnesses some of whom are facing threats and actual violence. He urges the court to balance the rights of the deceased who left behind a wife and a child in a cruel death with those of the 3<sup>rd</sup> Accused person. He urges that the court to deny him bail and bond terms until all witnesses testify.

## The Bail Information Reports

10. The 1<sup>st</sup> Accused person's report dated 12<sup>th</sup> March, 2024 was filed as directed by this court. It summarizes the 1<sup>st</sup> Accused person as a person aged 33 years old, a husband and a father to three school going children. The wife is (was) expectant at the time of visit. That he has a home in Meru and Nairobi and strong family ties who are supportive and the local administration of Kiiija location recommended his release as his family is well known. The report pointed out that the family of the deceased is strongly opposed to his release stating the possibility of interference with the witnesses, his own security, the victim's family and the community peace. The report stated that the family of the victim is suffering since the deceased is yet to be laid to rest. It recommended that the court can consider stringent bail and bond terms while taking into account the sentiments of the victim's family and the investigative agencies.
11. The court has also considered the 2<sup>nd</sup> Accused person's report dated 14<sup>th</sup> March, 2024. It points out that the 1<sup>st</sup> Accused person is 34 years old, a husband and a father of two children. That his family who includes his wife, aged mother, siblings, in law and uncles have expressed willingness to stand surety for him for his release. His community members were also in support of his release. It is stated that the family of the deceased strongly opposed his release stating the possibility of interference with the witnesses, his own security, the victim's family who are yet to lay their kin to rest. It is stated that the victim's family especially his wife and children, his extended family and community at large were still in shock over the death. It is stated that the 2<sup>nd</sup> Accused person has a fixed abode and strong support of his family and thus there are no compelling reasons to deny him bond. The report recommended



the court to consider the sentiments of the victim's family and the grieving process since the deceased is yet to be laid to rest.

12. The 3<sup>rd</sup> Accused person's report dated 14<sup>th</sup> March, 2024 described him as a 29 years old from a humble background and supports his parents. His family member were supportive and willing to act as contact persons to ensure compliance with court orders. That the local administration of Mulanthankari location recommended his release since he is neither a flight risk nor a threat to the community. The family of the deceased strongly opposed his release stating the possibility of interference with the witnesses, his own security, the victim's family and community peace. The victim's family has also expressed fear for their lives, the victim's wife being a prime witness sought for state protection. Recommendations were made that the court can consider allowing the 3<sup>rd</sup> accused favourable bail and bond terms while taking into account the concerns the victim's family.
13. The 4<sup>th</sup> Accused person's report dated 14<sup>th</sup> March, 2024 on the other hand describes him as a 32 years old, a husband and a father to one child. That he was working as a Communications Officer II with the Meru County Government and has a strong family ties who are supportive of his release. That he will reside In Marimanti in Meru far from the area the incident occurred. The community, his colleagues at work, members of the local administration and church members have no opposition to the 4<sup>th</sup> Accused person being released. On the other hand, the family of the deceased strongly expressed bitterness on how the deceased met his death and are traumatised by the same. The family express fear for the deceased's wife who is the prime witness and they pray for her state protection. The report recommended that the court can grant bail and bond terms to the 4<sup>th</sup> Respondent while taking into account the nature and seriousness of the offence, the sentiments and plight of the victims.
14. The 5<sup>th</sup> Accused person's report dated 13<sup>th</sup> March 2024 described him as a 26 years old, a husband and a father to one child. That he resides in Meru where he runs his business and thus not a flight risk. That his family are supportive and are willing to secure his release. The local administration of Kithatu area did not oppose his release. On the other hand, the family of the deceased strongly opposed his release stating the possibility of interference with the witnesses, his own security, the victim's family and community peace as the family is suffering since the deceased is yet to be laid to rest. The report recommended the court can considers admitting the 5<sup>th</sup> accused to bail and bond terms while taking into account the sentiments of the victim's family and the investigative officers.

### **Analysis and determination.**

15. Having considered the applications by the accused persons, the affidavits sworn in response thereof and prebail reports filed herein, the only issue for determination is whether the accused persons can be admitted to bail pending their trial.
16. There is no gain saying that bail is a constitutional right provided under Article 49(1)(h) of the [Constitution](#) it which provides that: -
  - “ An accused person has the right ...
    - (h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.’
17. The above provision is explicit that unless there exists some compelling reason, an accused person whether a citizen or foreigner, ought to be released on bail as a matter of right, pending the hearing and determination of his/her case. Therefore, what the court should consider is if the reasons tendered are compelling enough to warrant the denial of release of an accused on bail and bond terms. The Court



in the case of *Republic v Joseph Thiongo Waweru & 17 others* [2017] eKLR defined compelling reasons as follows:

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

18. There are also various factors which ought to be considered in bail and bond application which are provided under Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, to include:

- (1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
  - (a) the nature or seriousness of the offence;
  - (b) the character, antecedents, associations and community ties of the accused person;
  - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
  - (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 and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
  - (b) should be kept in custody for his own protection.

19. In the *Bail and Bond Policy Guidelines*, it is restated as a general guideline in Paragraph 4.9 that is:-

“In terms of substance, the primary factor considered by the courts in bail decision making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the Promulgation of the *Constitution* of Kenya, 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences”.

20. Having taken into consideration the foregoing parameters in light of the averments set out in the Applications, the Affidavits filed in support and opposition, the annexures and the Bail Information Reports filed in respect of each of the five accused persons. The court has taken note of the seriousness of the offence of murder which entails the death penalty if one is found guilty, and in this particular case, the matter being of a public interest. However, that does not make this particular case and its facts more special from any other offence for the purpose of bail pending trial. Therefore the bail applications by the 5 accused persons should be considered and looked at from the prism of Article 49(1) (b) above.



21. The key question that takes center stage is whether the accused persons will turn up for their trial if released on bond. The expression of Hon. Ibrahim, J. (as he then was) in the case of *Republic v John Kabindi Karisa & 2 others* [2010] eKLR serves a good guidance.. The court held: -

“This Constitutional provision came into force after the Promulgation of the New Constitution. As a result of this, the provisions of Section 123 of the *Criminal Procedure Code* which made the offences of murder, treason and robbery with violence non-bailable offences became obsolete and in effect repealed and inapplicable. In all these cases, the mandatory sentences provided by law is Death, and were referred to as Capital Offences. The said sentences are still applicable. It means now that in case a suspect is charged with any offence under the Penal Code including those that attract the death sentence e.g. murder, the same is bailable. A murder suspect has a Constitutional right to be released on bail. This is an in-alienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”

22. It follows that the fact that the accused persons are faced with murder charge is not enough reason to deny them bail Moreover, by dint of Article 50(2) of the *Constitution*, every accused person is entitled to the presumption of innocence. Thus, the presumption of innocence for all the accused persons herein dictates that they should be released on bail or bond whenever possible. None of the five accused persons has been shown to be a flight risk or likely to abscond court if admitted to bail. Indeed, from the pre-bail report, all the accused persons are of known abode within the Republic of Kenya and their family member were willing to stand as sureties to ensure their attendance of court. I am persuaded that the Accused persons are unlikely to jump bail if admitted to bail.
23. However, it was argued that the release of the accused persons would disrupt public order, peace and even security in the view that the murder in question sparked unrests by residents in various parts of Meru County. It has also instilled fears and havoc on the victim's family members especially the widow of the victim who believes that she might be a target by the accused persons if released on bail. All in all, this court is duty bound to strike the proper balance between the accused persons' constitutional right to bail and the interests of justice and harmony within the community. This can in my view be achieved by imposing conditions necessary for that purpose, including directing that the accused persons keep off certain localities. To that extend, I associate myself with the decision in the case of *Republic v Robert Zippor Nzihii* [2018] eKLR where the court observed as follows:-

“—in cases where limitations to the right to bail contemplated above exist, the Court must, as provided in Article 24(1)(e) of the *Constitution*, be satisfied that there are no less restrictive means to achieve the purpose other than the denial of bail. In other words the Court is required to explore the possibility of achieving the primary objective of granting bail, which is the attendance of the accused at the trial, by imposing such conditions that would ameliorate the possibility of the exceptions being a hindrance to the fair trial. The ordinary meaning of the word "compelling" according to Thesaurus English Dictionary is forceful, convincing, persuasive, undeniable and gripping. In my view bare averments of threats without elaborating the same or convincing evidence whether direct or indirect cannot amount to forceful, convincing, persuasive, undeniable and gripping evidence in order to amount to compelling reasons.”

24. In addition to the foregoing, it is the apprehension of the State that the 2<sup>nd</sup> accused persons and the others may interfere with and intimidate the prosecution witnesses. The 2<sup>nd</sup> accused person is said to be an Administration Police Officer based at the Governor's offices and may interfere with the



investigation to jeopardize the trial. However, the circumstances under which the offence happened the prosecution did not demonstrate that such a thing was likely to happen. The allegation is not supported by affidavit evidence from the witnesses or other people closely related to them demonstrating how the accused persons would interfere with their testimonies if admitted to bail.

24. Accordingly, given the standard of proof applicable at this stage is based on a balance of probabilities the prosecution, in my view, has failed to present any cogent evidence to support the allegations in the affidavit of compelling reasons. Having carefully considered the grounds relied on, it is my view that the reasons given do not pass the test set out under Article 49(1)(h) of the Constitution of Kenya, 2010.
26. In conclusion, I am of the considered view that the prosecution has not proved on a balance of probabilities that there are compelling reasons to warrant the denial of bail. I therefore find that the five accused persons herein are entitled to be released on bail on reasonable terms. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused persons are hereby released on the following terms:-
- a. Each accused person may be released on a bond of Kshs 1,000,000/= with two sureties of Kshs 500,000/- each.
  - b. In the alternative, each accused to deposit a cash bail of Kshs 500,000/=.
  - c. Each accused to deposit his/her Passport or any other travel documents in his/her possession with the court.
  - d. Each accused shall not leave the jurisdiction of this court without leave or order of the court.
  - e. Each accused to furnish the Deputy Registrar with evidence of his or her place of abode, and to inform the court whenever there will be change of residence.
  - f. Each accused to report to the Criminal Investigations Office on the Monday of every two weeks until further orders of the court.
  - g. The accused persons are restricted from accessing any locality in Chiakariga Sub-County and or the home Sub-County of the Victim herein, Daniel Muthiani Bernard alias Sniper where the Victim's relatives reside.
  - h. The accused persons to attend court for mention once every month for purposes of confirming compliance.
  - i. In the event of disobedience to Order (c) above, the accused persons shall be arrested immediately, and the bail terms automatically revoked.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 28<sup>TH</sup> DAY OF MAY , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Gacharia counsel for the State

Mr. Musyoka counsel for the 1<sup>st</sup> accused

Mr. Elias Mutuma counsel for 2<sup>nd</sup> accused

Mr. Mwenda counsel for 3<sup>rd</sup> accused



M/S Latifa counsel for 4<sup>th</sup> and 5<sup>th</sup> accused persons

Accused – All present

Court Assistant - Martin

