



**Republic v Obaga & another (Criminal Case E002 of 2024)
[2024] KEHC 6935 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE E002 OF 2024
GMA DULU, J
MAY 27, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SNAIDA ACHIEMO OBAGA 1ST ACCUSED

CAROLINE MWAKINGELE 2ND ACCUSED

RULING

1. The two accused persons have been brought to this court on an information for a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. They have not taken plea yet, as they have not been assessed for mental fitness, which is the procedural practice in murder cases.
3. They were brought to this court for the first time on 22nd February 2024.
4. Counsel for the two accused persons has, in the meantime on 2nd May 2024, orally applied for bail for both accused persons stating that they have been in custody for long, and that each of the two accused persons has health issues which cannot be attended to at Wundanyi GK Prison while in custody.
5. Counsel for the accused persons further submitted that though she had seen the pre-sentence reports, and that it was not true that any of the two accused persons was a flight risk. Counsel also stated that none of the two accused persons suffers from threats to their own safety, and that Caroline could relocate to another home and avail herself to Voi Court as and when required.
6. Counsel added that with regard to 1st accused, she had residences both at Wundanyi and Kakamega. Counsel urged that the two be released on reasonable bail terms.



7. In response, the Prosecuting Counsel relied upon the pre-bail reports as well as an affidavit in opposition to bail sworn by the investigating officer. Counsel emphasized that it was premature now to grant bail, and that it was important to guard against other possible killings if the two accused persons are released on bail/bond.
8. I have considered the request for bail/bond and the rival arguments of the defence counsel and the Prosecuting Counsel.
9. Bail is a constitutional right and, from the time of the promulgation of the Kenya *Constitution* in 2010, it applies to all offences whether serious offences or minor. In this regard Article 49(i) (h) provides as follows:-
 - “49(1) An arrested person has the right –
 - (h) to be released on bond or bail, or reasonable conditions, pending charge or trial, unless there are compelling reasons not to be released.”
10. It thus follows that any arrested person has a right to be released on reasonable bond or bail, unless there are compelling reasons to deny that person that right.
11. Courts have held that it is the primary obligation of the prosecution to demonstrate the existence of compelling reasons for denial of bail. Courts have also on their own motion considered compelling reasons that have come to their attention, even if not established by the prosecution.
12. In the present case, the two accused persons have been in custody since February 2024, a period of more than four (4) months now. They have not taken plea yet because they have not been subjected to mental assessment.
13. This delay was however neither caused by the Director of Public Prosecutions nor Wundanyi G.K. Prison, as there was a nationwide doctors strike which happily has now ended.
14. I have perused the pre-bail reports. I note that counsel for the accused persons has submitted that one of the accused persons suffers from peptic ulcers, and the other from epilepsy. I also bear in mind that they have been in custody now for some months without taking plea.
15. However, in my view, the hostile conditions in the area where the incident occurred, as well as the fact that the accused persons do not appear to have strong family ties which could compel them to come to court, I am of the view that in the circumstances of this case as disclosed to me currently, there are compelling reasons for denial of bail. If the situation changes, bail can still be considered.
16. As for now the request for bond or bail is declined.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF MAY 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Mr. Sirima for State

Ms. Akoko for both accused persons



Both accused persons

