



**Republic v Waweru & 2 others (Criminal Case E017 of 2022)
[2024] KEHC 14947 (KLR) (25 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 14947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E017 OF 2022
DO CHEPKWONY, J
MAY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ISAAC MUREU WAWERU 1ST ACCUSED

JOSEPH MUTHOTH O WANJIKU 2ND ACCUSED

ANTHONY NGIGI KAMATHI 3RD ACCUSED

RULING

1. For determination is the Notice of Motion application dated 15th December, 2023 seeking the following orders:
 - a. That the Honourable Court be pleased to release the Applicant/1st Accused person on favourable and reasonable terms.
 - b. That the Honourable Court be pleased to grant the Accused person an alternative of cash bail on favourable and reasonable terms.
 - c. That costs of this application be provided for.
2. According to the accused he was charged and arraigned in court on 6th June, 2022. However, he was not admitted to bond terms which he states is against his constitutional right. He holds that there are no compelling reasons demonstrated by the State to warrant his being denied his right as he is innocent until proven guilty. It is his contention that he has a fixed abode and is not a flight risk. The accused person states that he lacks capacity to interfere with witnesses and is ready to abide by the terms to be granted by the court. It is the accused person's case that the 2nd and 3rd Accused persons were granted bond of Kshs. 2,000,000/= and on assumption that he too would be granted the same terms, he filed an application dated 18th September, 2023 for review of Kshs. 2,000,000/= to Kshs. 500,000/= but



the same was dismissed on 14th December, 2023 when the court held that the 1st Accused person had not been given bail/bond terms and thus could not seek a review of the terms of bond granted for his co-accuseds.

3. The 1st Accused holds that the ruling of the court prompted him to file the present application in which he seeks for favourable bail and bond terms. The 1st Accused similarly filed submissions in support of his application which the court has also considered.
4. The State urged the court to call for a pre bail report to assist it making a determination on the said application. A Bail information report was filed on 24th May, 2024 wherein the Probation Officer upon conducting a social inquiry on the accused concluded that the 1st Accused person is a 36 year old father of two children and an orphan from a large family of 13 siblings. It was also stated that there was sibling rivalry which has divided the family members among those who support his release and those who oppose the same. It is further reported that one of his sisters and friends are willing to raise funds of Kshs. 200,000/= to Kshs. 300,000/= to secure his release. It is stated that if the 1st Accused is released on bond terms, he will move to Nakuru and stay with his sister who shall ensure he attends court as and whenever he is required.
5. On the part of the area administration it is stated that the 1st Accused has been displaying hostile behaviour and does not listen to advice given to him. However, he was not opposed to the accused's release on bond terms and stated that as long as in the end of the trial, justice should prevail. On the side of the family of the deceased they strongly opposed to the release of the accused as they are still mourning the demise of their kin.

Analysis and Determination

6. Having read through the respective affidavits, submissions filed by the accused and the Pre-bail Information Report, I find that the issue for determination is whether the 1st accused should be released on bond/bail terms.
7. It is trite that the right to Bail and bond is provided under Article 49(1)(h) of *the Constitution* it which states 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.’

8. It is worth-noting that this right to bail /bond is not absolute as the court has to consider whether there are any reasons tendered, compelling enough to warrant the denial of the accused's release on bail and bond terms. In the case of Republic –vs- Joseph Thiongo Waweru & 17 Others [2017] eKLR, the court 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.”



9. In granting one release on bond/bail terms, there are also various factors which ought to be considered in bail and bond application. These are provided for 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.
10. In this case, the court has considered the grounds advanced in the Affidavit filed in support of the application alongside the Pre-bail Information Report filed in respect of the 1st accused person and finds that there is no evidence that has been tendered on the likelihood of him interfering with the witnesses. It is also reported that the 1st accused has a fixed abode and shall be housed by one of his sisters in Nakuru. Therefore, the court finds that no compelling reasons have been advanced to warrant the accused person being denied bail or bond terms.
11. Given that the 1st Accused person had already filed an application for review of bond terms which was dismissed in its earlier ruling, the court has considered the sentiments of the Accused person and proceeds to allow the accused person's application for review of the bond terms issued on 3rd November, 2022 in the following terms:-
- a. The Applicant/1st accused person may be released on a bond of Kshs. 500,000.00 with one surety of a similar amount; and or
 - b. In the alternative, a cash bail of Kshs. 500,000.00.
 - c. The accused person to provide a contact person in terms of occupation, place of residency/abode.
 - d. The accused to attend court whenever he is required until the case is finalised.
 - e. Failure to abide by any of the conditions set above, the bond terms will be rendered cancelled and the accused to be remanded in custody.
 - f. Hearing on 19th September, 2024.

It is so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25TH DAY OF MAY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Nanjira counsel for Respondent/Appellant

Mr. Mwangi counsel for Respondent/Applicant

Court Assistant - Martin

