



**Republic v Ombae (Criminal Case E054 of 2022)
[2023] KEHC 21516 (KLR) (Crim) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E054 OF 2022
K KIMONDO, J
AUGUST 18, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

NICHOLAS NYAMBATI OMBAE ALIAS NICO ACCUSED

RULING

1. On July 13, 2023, learned counsel for the accused, Mr Mayieka, made an oral application for bail. The Republic opposed the request and sought for 7 days to file a replying affidavit.
2. When the matter came up for further hearing on July 31, 2023, the State had still not complied. Learned Prosecution Counsel, Ms Gikonyo, informed the court that the delay was occasioned by the recent arrest of an accomplice and a late decision to charge.
3. I was not satisfied with the excuse noting that the accused was arrested nearly a year ago on August 17, 2022. Learned counsel for the accused submitted that the accused has a young family and that in all the circumstances of this case, there were no compelling reasons for denial of bail.
4. The rebuttal from the Republic was three-pronged: Firstly, that the accused is a flight-risk. Counsel submitted that immediately after the incident on November 17, 2021, the accused went into hiding and only resurfaced in August 2022. He was first presented to the High Court on August 25, 2022. Secondly, the accused has or had a relationship with one of the key witnesses in the case. Accordingly, the likelihood of interference with evidence is high. Lastly, the State contended that although one accomplice has been now arrested, others remain at large.



5. I take the following view of the matter. By dint of Article 50 (2) (a) of the [Constitution](#) the accused is presumed innocent. Further, under Article 49 (1) (h) as read together with section 123A (1) of the Criminal Procedure Code, he is entitled to bail unless there be compelling circumstances.
6. With regard to the phrase compelling reasons, I rely on the decision by Gikonyo J in *Republic v Joktan Mayende & 3 others, High Court, Bungoma, Criminal Case 55 of 2009 [2012] eKLR*.
7. Additionally, paragraph 4.9 of the [Bail and Bond Policy Guidelines](#) provides:

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 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences. ... the determination of whether there are compelling reasons that can justify the denial of bail should be made by evaluating whether or not the accused person will attend his or her trial....
8. The overarching objective of bail is to ensure the accused attends trial. See [Michael Juma Oyamo & another v Republic](#), Court of Appeal, Nairobi Criminal Appeal 113 of 2018 [2019] eKLR; *Muraguri v Republic* [1989] KLR 181; [R v Fredrick Ole Leliman & 4 others](#), Nairobi High Court Criminal Case 57 of 2016 [2016] eKLR.
9. When I juxtapose those principles against the facts here, I find further as follows. The accused is charged with murder. The Information dated August 24, 2022 states that on the night of November 17, 2021 within Dandora Phase 3, Njiru Sub-County, within Nairobi County he murdered Geoffrey Akumu Bosire.
10. Like I stated, the accused was arrested many months after the incident. To be specific, he was first presented to the High Court on August 25, 2022. I have no cause to doubt the prosecution, and it may be inferred that he went underground. An accomplice was arrested a few days before the present proceedings and was waiting to take plea. From the annexed witness statements of D3 and D6, it appears that other perpetrators remain at large. Owing to the grave nature of the charge, the likelihood to abscond is heightened and the attendance of the accused at the trial cannot be fully guaranteed.
11. I also note from the materials before the court that the accused had a relationship with one witness, D1, with whom they have a young child. The likelihood of interference with such a witness or tampering with evidence is thus not farfetched. I thus readily find that there are compelling reasons for denial of bail.
12. The upshot is that bail is denied. The accused person shall remain in custody until the conclusion of the trial. In the interests of justice, the hearing shall be fast-tracked.

It is so ordered.

DATED, SIGNED and DELIVERED this 18th day of August 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

The accused.

Mr. Mayieka for the accused.



Mr. Mulama holding brief for Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

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