



**Kamau v Republic (Criminal Case E007 of 2021)
[2024] KEHC 12926 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E007 OF 2021
CW GITHUA, J
OCTOBER 23, 2024**

BETWEEN

STEPHEN GITHINJI KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Stephen Githinji Kamau, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. He denied the charges.
2. A perusal of the court record shows that prior to the filing of the current application for bail pending trial dated 11th March 2024, two previous applications had been filed which were withdrawn for different reasons.
3. The application dated 11th March 2024 was opposed by the prosecution through an affidavit sworn on 24th May 2024 by the investigating officer, CPL Samwel Bingwa. The main reason advanced by the said officer for objecting to admission of the accused to bail or bond is that the accused was a neighbour to the deceased and the victim's family as well as the community at large were bitter and hostile towards him and had threatened to kill him should they see him in their village.
4. The accused in response to the replying affidavit filed a supplementary affidavit in which he deposed that if released, he will relocate from the locus in quo and will live with one Patrick Kairu Githinji in Njiru in Nairobi for the duration of the trial. The said Patrick Githinji also swore an affidavit confirming that he was a close relative to the accused and was willing to accommodate him in his home at Njiru if he was released on bond.
5. The application was argued orally before me on 24th September 2024. I have considered the application, the affidavits sworn in support and against the application as well as the oral submissions made by



learned counsel Ms. Githinji who appears for the accused and learned prosecuting counsel Ms. Muriu. I have also noted the contents of the pre- bail report filed on 3rd June 2024.

6. It is not disputed that under Article 49 (1) (h) of *the Constitution* of Kenya 2010, an arrested or accused person has the right to be released on bail or bond on reasonable conditions pending charge or trial unless there were compelling reasons not to be released.
7. It is now settled that the duty to demonstrate existence of compelling reasons justifying denial of bond is on the prosecution. Whereas there is no standard measure of what constitutes compelling reasons and each case must be decided on its own merits, Section 123A (2) of the Criminal Procedure Code (CPC) and the Judiciary Bail and Bond Policy Guidelines 2015 enumerates several factors which guides courts in determining what may constitute compelling reasons warranting denial of bail depending on the facts of the case under consideration. These factors includes whether the accused was a flight risk and may fail to attend his trial if released; whether he would interfere with investigations or witnesses; whether he would endanger victims or public safety and, whether he should continue being detained for his own safety and security.
8. In exercising its discretion when determining applications for bond or bail, the court must be careful to remember that denial of bond amounts to limitation of an accused person's right to liberty and that an accused person has a constitutional right to be presumed innocent until proved guilty. The court must therefore keenly scrutinize the reasons given by the prosecution in opposition to bond to ensure that they are backed by cogent evidence and are not mere allegations. In all cases, bail should not be denied on flimsy grounds but on the basis of sound and credible evidence.
9. That said, in this case, the prosecution's only reason for opposing admission of the accused to bond or bail is that this was necessary for his own protection as members of his community had threatened to lynch him if they ever saw him in their village again. This claim is confirmed in the pre-bail report. The accused has in answer to this claim sworn an affidavit confirming that if released, he will live in Nairobi with a relative and will not go back to the locus in quo. The relative who has offered to accommodate him has also sworn an affidavit confirming that position.
10. In view of the foregoing, I find that the reason cited by the prosecution in opposition to the accused's application has been countered by the accused's proactive action of securing alternative accommodation pending his trial. I say so because if accused does not go back to his home village if released, the threats on his life by his neighbours will be too remote. Having said that, I would like to caution members of the public that attacking people suspected of having committed crimes in what is commonly referred to as mob justice amounts to a criminal offence and has serious penal consequences. It would do them well to remember that in law, an accused person is presumed innocent until proved guilty.
11. For the foregoing reasons, I find no good reason to deny the accused person his constitutional right to bail pending trial. The upshot is that I find merit in the Notice of Motion dated 27th February 2024 and it is hereby allowed on the following terms;
 - i. That the accused will be released upon signing bond of Kshs. 500,000 together with one surety of a similar amount. The surety to be approved by the Deputy Registrar of this court.
 - ii. Once released, the accused shall not reside in or visit Rwathia Village or contact any of the Prosecution witnesses whether directly or indirectly until this case is concluded.
 - iii. The accused will attend this court on all hearing dates or whenever required without fail.
 - iv. Failure to comply with any of the above conditions will lead to cancellation of his bond.



v. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 23RD DAY OF OCTOBER 2024.

HON C. W GITHUA

JUDGE

In the Presence of:

The accused

Ms. Muriu for the State

Ms. Susan Waiganjo, Court Assistant

No appearance for Ms. Githinji for the accused

