



REPUBLIC OF KENYA



**Republic v Wanjiku (Criminal Case E019 of 2024)
[2025] KEHC 3184 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E019 OF 2024
A MSHILA, J
FEBRUARY 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MACHARIA WANJIKU ACCUSED

RULING

Background

1. Before the Court is an informal application by the accused person that he was now being in custody held contrary to the orders issued on 29/11/2024;
2. The accused was charged with others in Kahawa Criminal Case No.E124/2023 for abduction and had been granted bail; the State being dissatisfied with the decision lodged an appeal and obtained orders for stay of the bail terms granted by the trial court; pending the hearing and determination of the appeal some of the accused persons were remanded at Industrial Area and Kitengela Prison; On 29/11/2024 the State lost its appeal and the Bond terms for all the accused persons were reinstated by the appellate court sitting in Kiambu;
3. The case in which the accused is charged with others before the Kahawa Magistrates Courts is part heard; during its pendency and that of the appeal the State on the 19/06/2024 initiated murder charges against all the accused persons and when they were produced before the Kiambu High Court the Plea was deferred as the accused had not been subjected to a mental assessment; the Court then directed that they be escorted to the nearest hospital for mental assessment to be conducted and meanwhile they were all to be remanded at Kiambu Prison;
4. The 11th Accused John Macharia Wanjiku proceeded to file his Petition No. E026 of 2024 dated the 31st day of July, 2024 which was brought under the provisions of Rule 3, 4(1), 8 and 10 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. The



particulars of violation of the Constitution and statutory provisions were that the Respondent's actions are contrary to Article 157 of the Constitution.

5. The Petitioner obtained orders deferring the taking of Plea pending the hearing and determination of the Petition; All the other accused enjoined themselves as Interested Parties and are all benefiting from the Order;
6. It is reiterated that on the 29/11/2024 the State lost its appeal and the accused's bond terms were upheld; The trial court at Kahawa proceeded to issue a release order that the accused persons be released forthwith but the Prisons declined and the explanation for non-compliance was that the High Court had issued orders that the accused be remanded pending mental assessment which orders had not been vacated.
7. Due to this order of the High Court the accused were unsuccessful in securing their release. The accused were then transferred to Nairobi Remand as Kiambu Prison did not have the mandate or facilities to hold the remandees who were suspected to have committed the capital offence of murder;
8. The application was canvassed by way of oral submissions.

Petitioner/Applicant's Submissions

9. Mr. Ogolla counsel for the Petitioner submitted that the accused person is in custody and there are no on-going investigations. That any further detention is illegal as such the accused should be released forthwith.
10. Mr. Omari for the 1st accused submitted that there should be no further detention until the question of the accused's rights raised before court has been determined. The state was accused of denying the accused persons their freedom.
11. Mr. Wandugi for the 2nd and 15th accused submitted that it is an injustice to deny the accused bail and the same is frustrating the due process. The accused persons were said to be held unlawfully.
12. Mr. Mwale counsel for the 3rd to 13th accused persons submitted that the accused have a right to be released pending charges or trial. That there is no opposition by the defence to deny the accused admissions to bail/bond.

Respondent's Submissions

13. Mr. Gacharia the prosecution counsel for the State submitted that there are committal warrants that are valid as such the accused persons are being held legally. It was stated that none of the accused persons has made an application for bail. The right to bond is not absolute. He submitted that the state had compelling reasons to oppose the release of the accused persons.

Issues for Determination

14. Having heard the oral submissions of the parties this Court has framed only one issue for determination; which is whether to order release of the Applicant and the co-accused persons to bail pending hearing and determination of the Petition.

Analysis

15. There are two different cases running consecutively and in one case that is the one in Kahawa Magistrates Court the parties herein have secured and been admitted to bond; in the murder case before the High Court the plea was deferred pending the outcome of the Petition;



16. The Applicant had moved the court that the main focus be on the Petition and that it takes priority and that all the applications be subsumed in favour of the main Petition and all issues be dealt within the Petition. It is on this Order that the Petitioner/Applicant continues to ride and cleverly did not file any formal application seeking the orders being now sought informally.
17. The Applicant has the benefit of the order deferring the taking of the Plea pending the outcome of the Petition and it is this courts considered view that the Applicant and the Interested Parties must therefore await the outcome of the Petition.
18. The application is therefore disallowed at this stage.

Orders Accordingly

DATED SIGNED AND DELIVERED AT KIAMBU THIS 13TH DAY OF FEBRUARY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Ogolla – for the Applicant

