



**Republic v Njoka & 4 others (Criminal Case E010 of 2023)
[2024] KEHC 10742 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E010 OF 2023
LW GITARI, J
AUGUST 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN GITARI NJOKA 1ST ACCUSED

JEDIEL KINYANJUI KIURA 2ND ACCUSED

WILFRED KIRIMI NKARI 3RD ACCUSED

NEWTON MUTWIRI 4TH ACCUSED

GAMESON MUSYOKA NKARI 5TH ACCUSED

RULING

1. When this matter came up for hearing on 3/7/2024 the Counsel for the accused persons, Mr. Mugira made an application that the court considers releasing the accused on bail pending the conclusion of the trial. Earlier when the application was made, Mr. Ketoo, Prosecutions Counsel applied that the court calls for pre-bail report before considering releasing the accused persons on bail. The court ordered the probation officers to file pre-bail reports for all the accused.] The reports were filed by the probation officer and I will take liberty to analyse the recommendations by the probation officer for each of the accused persons.

Probation Officer’s report for John Gitari Njoka:

Victims concern/Victim Impact Statement.

2. The victim’s family members are opposed to the accused person being granted bail claiming that he and his co-accused are likely to interfere with the remaining witnesses as they are immediate neighbours to them. They also stated that the accused are likely to be harmed as tension in the area has not subsided.



They requested to be absolved from any blame if the accused are harmed by the community in case they are released before the case is concluded. They stated that they are yet to bury their kin as they will only do so after justice is served.

Community ties:

3. The accused has been an active member of East Africa Pentecostal Church for many years. He is currently a church elder. The area administration and members of the community do not have any negative sentiments towards the accused person. They do not perceive him as a threat to any in the locality and beyond.

Conclusion:

4. The accused is sixty two (62) years old, a father, grandfather and church elder. He is a carpenter and also does masonry work. He has back pains and the doctor has advised him to go for a C.T. Scan.

Recommendation:

5. The general consensus in the community is that he was a law abiding citizen before his arrest. Apart from the victim's family who claim there are tensions in the community actually to deny the accused his constitutional rights, to bond and bail, the rest of the community members are not against him being granted bail and bond. I note that the police and local administration are tasked with the duty to protect citizens and their property. I thus find no compelling reasons to deny him bond fifteen months after he was arraigned in court. He promised to abide by the court bond terms if he is granted the same.
6. As the 2nd Accused Joshua Kinyanjui Kiura, he is said to be 47 years old. He is said to have several responsibilities in the community. His social status as a campus lecturer has elevated him in the society. The sentiments of the victim are the same, cut across. Bail is recommended and has promised to abide to the terms and conditions of bail

For 3rd Accused:

7. He is 50 years. The victim's concerns are same. Bail is recommended

4th Accused:

Newton Mutwiri

8. He is said to be 34 years old. Victims concerns are the same. Bail is recommended.

5th Accused:

Gameson Musyoka Nkari

9. He is 48 years old. The victim's sentiments are the same.
10. Bail is recommended. This forms the social inquiry report which has stated that the released of the accused on bail is recommended as the community does not oppose their release and there will be no backlash if they are released. The accused have applied to be released on bail/bond. Under Article 49(1) of the *Constitution* bail is a constitutional right which cannot be denied accused person unless there are compelling reasons to deny them bail. The offence murder under 203 as read with Section 204 of the Penal Code is a bailable offence. This court had denied the accused persons bail after it concluded that- "The State has demonstrated that there was a real threat to the safety of the accused if released on bail"



11. One and half years later, based on the social inquiry report the situation has changed and there is no threat to the safety of the accused Article 49(1) (h) of the Constitution states that-

"An accused person has the right to be released on bond or bail on reasonable conditions pending a charge or a trial unless there be compelling reasons not be released."
12. Section 123A of the Criminal Procedure Code sets out exceptions to the right to bail or bond and provides that the court shall have regard to all relevant circumstances and in particular the nature of the seriousness of the offence, the character antecedents, associations and community ties of the accused person, the record of compliance with previous grants of bail and the strength of the evidence the Section provides that an arrested person shall be granted bail unless he is likely to abscond or even for his own protection. The granting of bail to an accused is based on the constitutional right of an accused person to be presumed innocent until proved guilty, Article 50(2) (a) of the Constitution.
13. In the case of Danson Mugunya & another (2010) eKLR Judge Ibrahim (as he then was stated that-

"..... A murder suspect has a constitutional right to bail. This is inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."
14. The court is supposed to exercise its discretion and grant the accused bail if there are no compelling reasons. Compelling reason is defined as exceptional circumstances.
15. In this case a number of witnesses have testified. The probation has done a thorough inquiry on the background of the accused, family ties, community ties and the victim's family. She has recommended the granting of bail to the accused, family ties, community ties and the victim's family. She has recommended the granting of bail to the accused. I find that there are no compelling reasons to deny the accused. Needless to say, the offence is serious and in granting bail this is one of the factors to be considered. I have noted that the prosecution is not opposed to the release of accused on bail. I also should state the Judiciary has been urged to have a rapid result initiative to decongest prison both the remand and those in prison serving sentence as the prison is constrained due to limited resources. This is the time to ensure persons like the accused should be released from Prison as there is no compelling reason not to release them.

Conclusion:

16. I order that the application for the release of the accused on bail has merits. I will proceed to set the bail terms. Each accused shall be released on a bond of Kshs 2,000,000/- plus one like surety or on a cash bail of Kshs 300,000/- to appear.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 30TH DAY OF AUGUST 2024.

L.W. GITARI

JUDGE

30/8/2024

Ms Hymo S/C for State

1st to 5th Accused - Present

Ms Mugira Advocated for Accused.

The Ruling has been read out in open court.

L.W. GITARI



JUDGE

30/8/2024

