



**Republic v Njoroge (Criminal Case E008 of 2024)
[2024] KEHC 16364 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E008 OF 2024
DO CHEPKWONY, J
DECEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

CHARLES WAIGANJO NJOROGE ACCUSED

RULING

1. This ruling determines an application for bail by the accused person, Charles Waiganjo Njoroge, who is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence are that :

“On 3rd day of March, 2024 at Ndiguini area in Kikuyu sub-county within Kiambu County, the accused murdered Evan Macharia Njoroge”.

2. The accused has pleaded ‘Not Guilty’ to the offence and the court is now tasked with the issue of determining whether bail should be granted. The prosecution, through Mr. Gacharia, indicated that they do not have compelling reasons to oppose the release of the accused on bail but requested for a social inquiry to be conducted and presented to aid the court in its decision on whether or not to grant the accused release on bond/bail. This report was filed on 9th October, 2024 and it forms the basis of the court’s considerations.

Background

3. The particulars of the offence allege that on the 3rd day of March 2024, at Ndiguini area in Kikuyu Sub-County within Kiambu County, the accused unlawfully murdered Evan Macharia Njoroge, who was his younger brother. During the bail hearing, the prosecution expressed no opposition to the accused being granted release on bond/bail but emphasized the need for a detailed pre-bail report to provide



insights into the accused's background, community sentiments, and the victim's family concerns. The accused's counsel did not object to the calling of a social inquiry, preparation of a pre-bail report.

Pre-Bail Report

4. In the pre-bail report filed on 9th October, 2024, the probation officer has evaluated several factors, including the accused's family and personal circumstances, community ties, and the views of the victim's family and local administration.
5. In the pre-bail report, the probation officer has painted a mixed picture of the accused person's circumstances. It has been reported that the accused, a 39-year-old casual laborer, has had a strained relationship with his siblings, some of whom allege that he had previously issued threats against them although the same have never been formally reported and they seek stringent terms to be set so as to safeguard their safety and well being. The community elders and the local administration have also described the accused as a person with a volatile with little concern to societal nuisance who been on their apparatus radar for sometime and equally implore for stringent bond/bail terms in appreciation of the accused right to fair bail/bond terms. According to the local administration and community, they have reservations to his release on bond but only potential security or liability from the community..
6. According to the probation officer, the accused is an elder brother the victim's family has pointed they lived in the same compound with him. They have been reported to be deeply shocked and traumatized by the events leading to Evan Macharia's death and the gruesome manner he was killed. They are opposed to the accused person's release on bond/bail arguing that the accused has made numerous threats against them, though not formally reported. Ultimately, the report recommends against granting the accused bail at this time, citing significant safety and security concerns.

Analysis and Determination

7. This court has read through the pre-bail information in consideration of whether or not to release the accused person on bond/bail. The right to bail is enshrined under Article 49(1)(h) of the [Constitution](#) of Kenya, 2010, which provides that an accused person is entitled to be released on bail or bond, on reasonable conditions, unless there are compelling reasons not to be released. This provision underscores the presumption of innocence and ensures that pre-trial detention is not used punitively.
8. In the case of [Republic v. Joseph Thiongo Waweru & 17 Others](#) [2017] eKLR, the court elaborated on the threshold for compelling reasons, emphasizing that the prosecution bears the burden of demonstrating the existence of such reasons. The court went on to hold that mere allegations or suspicions are insufficient but instead, the evidence presented to prove this must be cogent, specific, and strong.
9. Further, Section 123A of the [Criminal Procedure Code](#) outlines factors to consider in bail decisions, including the nature of the offence, the accused's character and community ties, the likelihood of absconding, and any potential interference with witnesses. Also, courts are required to balance the accused's constitutional rights with the need to ensure public safety and the integrity of the judicial process.
10. In this case, the court has carefully considered the submissions made by respective counsels, the pre-bail information report, and the applicable legal principles. The charge of murder, as defined under Section 203 of the [Penal Code](#), is a serious offence that carries the maximum penalty of death as prescribed under Section 204. While the seriousness of the offence alone does not justify the denial of bail/bond for an accused, it is considered a relevant factor that necessitates stringent scrutiny.



11. The pre-bail report has raised significant concerns about the accused's temperament and his strained relationship with family members, some of whom have expressed fear and apprehension. The report also highlights the hostility against the accused from the local community and potential safety risk he is likely to face if released. In the case of *Republic v. Richard David Alden* [2016] eKLR, the court recognized community hostility as a legitimate concern that could warrant denial of bail, particularly where it poses a threat to public order or the safety of the accused.
12. Additionally, the views of the victim's family, while not determinative, must be taken into account. In the case of *Republic v. Godfrey Madegwa & 6 Others* [2016] eKLR, the court emphasized the importance of considering victims' concerns while ensuring that such views do not unduly influence the court's discretion. In this case, the victim's family has expressed legitimate concerns about the accused's presence in the community and its potential impact on their emotional well-being.
13. Having weighed the competing considerations, the court finds that the accused's right to bail must be balanced against the safety concerns raised by the community and the victim's family. It is worth noting that under Article 49(i)(h) of the *Constitution* of Kenya, 'an arrested person has a right to be released on bond or bail, on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released'. However, these rights are not at all absolute as the court must endeavour to balance the interests of the accused person with the society which is aggrieved and is pursuing justice. This right is based on the following principles:-
 - a. The right of an accused person to be presumed innocent
 - b. The accused person's right to liberty.
 - c. The accused person's obligation to attend court as and when required until the determination of this case.
 - d. Right to reasonable bail and bond terms
 - e. Balancing of the rights of the accused persons' and the interest of justice.
 - f. A consideration of the rights of the victims.
14. In consideration of the said principles, the accused person, Charles Waiganjo Njoroge's application seeking for release of bail and bond, the same is allowed in the following terms:-
 - a. The accused may be released on a bond of Kshs.500,000/= with two sureties of a similar amount.
 - b. In the alternative, the accused/Applicant may be released on cash bail of Kshs.300,000/=.
 - c. The accused to prove full particulars of the sureties and contact person, including name, identity and number, place of residence/abode, occupation, relationship with the accused person etc to the Deputy Registrar for approval as to their suitability.
 - d. The accused to refrain from any contact whether directly or indirectly with any of the prosecution witnesses.
 - e. The accused to report to the Officer Commanding Station (OCS), at Kikuyu Police Station once every Friday of the month to ensure compliance with order (d) herein.
 - f. Failure to comply with any of the above condition shall result with the immediate revocation of the order on bail/bond.



It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF
DECEMBER, 2024.**

D. O. CHEPKWONY

JUDGE

