



**Republic v Wangare (Criminal Case E028 of 2024)  
[2024] KEHC 16388 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E028 OF 2024  
DO CHEPKWONY, J  
DECEMBER 20, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NAFTALI WANGOMBE WANGARE ..... RESPONDENT**

**RULING**

1. This ruling addresses the application for bail by the accused, Naftali Wangombe Wangare, who is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The accused pleaded not guilty to the charge, and his counsel applied for his release on reasonable bail terms. The prosecution did not oppose the application but requested for a social inquiry to be conducted and a pre-bail report in respect of the accused to guide the court. The court is now tasked with determining whether bail should be granted and, if so, under what terms?

**Background**

2. The accused faces allegations that on the 9th day of April, 2024, at Githuraini Village in Kamburu Sub-location, Lari Sub-county, Kiambu County, he unlawfully murdered John Kamau Njuguna. During the proceedings, the accused, through his counsel, Mr. Juma, argued that he has been in custody for two and a half months he is not a flight risk, and has cooperated with investigative authorities. Counsel also emphasized the accused’s willingness to comply with any conditions that may be imposed by the court.
3. On its part, the prosecution, represented by Mr. Gacharia, indicated that they had no objection to the grant of bail but highlighted the seriousness of the offence and the potential community hostility. A pre-bail report was subsequently filed, detailing the accused’s personal and family circumstances, community sentiments, and the victim’s family’s concerns.



## Pre-Bail Report

4. The probation officer's report provided a comprehensive assessment of the accused's background. It revealed that the accused is a 25-year-old casual laborer with no prior criminal record and no parental responsibilities. His family described him as hardworking and expressed their willingness to act as sureties. The report also indicated that the victim's family, while grieving the loss of their loved one, did not object to bail provided stringent conditions were imposed. However, the local administrator highlighted community hostility towards the accused and expressed concerns about his safety if released on bond/bail.
5. The probation officer concluded that the accused could be granted bail but under appropriate terms, coupled with conditions to ensure compliance and protect the community's safety. This recommendation forms a critical part of the court's considerations.

## Analysis and Determination

6. Having carefully read through the background of this case and the pre-bail information report on the accused filed on 18<sup>th</sup> November, 2024, I find the question for determination being whether or not to grant the accused bond/bail.
7. The right to bail is enshrined in Article 49(1)(h) of the *Constitution* of Kenya, 2010, which provides that 'an accused person has the 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. This provision underscores the presumption of innocence, which is a cornerstone of Kenya's criminal justice system.
8. In the case of *Republic v. Joseph Thiongo Waweru & 17 Others* [2017] eKLR, the court clarified the standard for denying bail, emphasizing that the prosecution bears the burden of proving the existence of compelling reasons. The court went on to hold that such reasons must be supported by cogent, strong, and specific evidence as allegations, mere suspicions, or objections unsupported by substantive evidence, are insufficient to deny bail.
9. Section 123A of the *Criminal Procedure Code* provides additional guidance on factors to consider when determining bail applications. These include:
  - a. The nature and seriousness of the offence;
  - b. The accused's character, antecedents, associations, and community ties;
  - c. The accused's record of compliance with previous bail terms;
  - d. The strength of the evidence linking the accused to the offence; and
  - e. Whether the accused poses a flight risk or requires custody for their own safety.
10. In the present case, a consideration has been made of;
  - (a) Seriousness of the Offence: The charge of murder under Section 203 of the *Penal Code* is a grave offence punishable by death under Section 204. While appreciating that the seriousness of the charge alone does not constitute a compelling reason to deny bail, it requires the court to exercise heightened caution when considering the application. In the case of *Republic v. Danford Kabage Mwangi* [2016] eKLR, the court reiterated that seriousness must be weighed alongside other factors, particularly the likelihood of the accused absconding or interfering with witnesses.



- b. Community Sentiments and Safety: The pre-bail report has highlighted significant hostility within the community where the alleged offence occurred. This hostility raises concerns about the accused's safety if released. In the case of *Republic v. Richard David Alden* [2016] eKLR, the court noted that community hostility could constitute a compelling reason for denying bail, particularly where it poses a direct threat to the accused or undermines public confidence in the administration of justice. However, the court must balance these concerns with the accused's constitutional rights.
- c. Family Support and Sureties: The accused's family has expressed willingness to support him and act as sureties. This support mitigates concerns about the accused's flight risk. In the case of *Republic v. Dwight Sagaray & 4 Others* [2013] eKLR, the court observed that strong family ties and community support reduce the likelihood of an accused absconding.
- d. Victim's Family Concerns: While the victim's family expressed grief and bitterness, they did not oppose the release of the accused on bail, provided stringent conditions were imposed. This stance aligns with the principles articulated in *Republic v. Godfrey Madegwa & 6 Others* [2016] eKLR, where the court emphasized the need to consider victims' views without allowing them to unduly influence judicial discretion.

## Conclusion

11. Having considered the submissions by respective counsels, the pre-bail report, and the applicable legal principles, the court finds no compelling reasons to deny the accused bail. However, in light of the community hostility and the seriousness of the charge, it is imperative that conditions be imposed to ensure the accused's compliance with bail terms and the safety of all parties.
12. Consequently:
  - a. The accused, Naftali Wangombe Wangare, is hereby granted bail of Kshs.500,000.00 with one surety of a similar amount.
  - b. The accused shall not visit or reside in Githuraini Village during the pendency of this trial.
  - c. The accused shall report to the Officer Commanding Station (OCS) at Lari Police Station once every first Friday of the month.
  - d. The accused to provide full particulars of a contact person in terms of name, residence, identification, physical address, telephone number and occupation.
  - e. Failure to comply with the above conditions, the bond terms will be cancelled and accused remanded during the trial.

It is so ordered.

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

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Ndeda counsel for the State

Mr. Njenga holding brief for Mr. Njoya counsel for accused



Accused present

Court Assistant Martin

