



**Director of Public Prosecution v Njagi (Criminal Case  
E024 of 2023) [2023] KEHC 3004 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E024 OF 2023  
TW CHERERE, J  
MARCH 30, 2023**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... PROSECUTOR**

**AND**

**DUNCAN MURIITHI NJAGI ..... ACCUSED**

**RULING**

1. Duncan Muriithi Njagi was on March 2, 2023 arraigned for the offence of the murder of his sister Naomi Kareia Njagi on December 30, 2022.
2. When the matter came up for plea on March 23, 2023, the prosecution through Ms Rita opposed bond on the basis of three affidavits
3. In the first affidavit sworn by CPL Sila, the investigating officer on March 24, 2023, he avers that accused is not fit to be admitted to bond for the following reasons:
  1. He was previously charged with the murder of his brother in Meru CR Case No 59 of 2008 which case was withdrawn after witnesses alleged that he had threatened them
  2. Mary Kambura, the wife to his deceased brother who was keenly following up her late husband's murder case was killed mysteriously in 2009
  3. In 2015, accused took his mother Elizabeth Njagi to stay with him in Kwale in 2015 and she disappeared never to be seen again
  4. In 2014, accused bought land in Kwale for his relative one Daniel Njagi where he relocated and was later gunned down and accused was suspected to have been involved in the murder
  5. Accused's relatives and community are bitter with accused and his safety cannot be guaranteed
  6. Accused is likely to interfere with witnesses



4. Accused's brother Samuel Muthengi by his affidavit sworn on March 22, 2023 similarly opposed bond and reiterated the numerous deaths and disappearances within the family as stated in the investigator's affidavit which according to him were suspected to have been committed by accused
5. He deposed that accused threatened them leading to the withdrawal of Meru CR Case No 59 of 2008.
6. The deponent avers after his deceased brother's wife was killed mysteriously, her brother who suspected accused to be behind her death was also killed mysteriously.
7. The deponent therefore avers that he is apprehensive that accused will wipe out their whole family if he is released on bond
8. Accused's cousin Joseph Mugeo Makembo by his affidavit sworn on March 22, 2023 similarly opposed bond and stated that eh was apprehensive that accused who had attempted to harm him on the night of January 20, 2023 might actualize his threats if he is released on bond.
9. Accused by his replying affidavit sworn on March 28, 2023 opposed the application to deny him bond and stated as follows:
  1. Meru CR Case No 59 of 2008 in which he was charged with killing his brother was withdrawn with the consent of the family members
  2. That he was in Kwale on December 30, 2022 when the offence was allegedly committed
  3. He denied having a hand in the killing Mary Karambu and Daniel Njagi and the disappearance of his mother Elizabeth Njagi
  4. He denied attempting to harm Joseph Mugeo Makembo
  5. He is employed by TSC as a teacher at Kwale
  6. There are no reasonable grounds for denying him bond
10. His cousin Peter Gitonga and sister Dorcas Mukami Njagi by their affidavits sworn on March 22, 2022 and March 28, 2023 respectively depose that the allegations by Samuel Muthengi and Joseph Mugeo Makembo are untrue meant to tarnish accused's name and have him loose his job
11. I have considered the application in the light of all the affidavits nad annexures on record.
12. Article 49(1)(h) of the *Constitution* of Kenya provides that:  
An arrested 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.
13. The *Constitution* does not define the term "compelling reasons". In the case of *Republic v Joktan Mayende & 4 others* Bungoma High Court criminal case No 55 of 2009, the court defined the term "compelling reasons" as follows: -  

"The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the constitution."



14. In the case of *Republic v Francis Kimathi* [2017] eKLR, the court held that:

“... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing strong interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust bill of rights enshrined in the Constitution.

15. The Bail and Bond Policy Guidelines provides as follows concerning in regard to compelling reasons:

“(a) The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- a. That the accused person is likely to fail to attend court proceedings; or
- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
- c. That the exception to the right to bail stipulated under section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
- e. That the accused person is likely to interfere with witnesses or evidence; or
- f. That the accused person is likely to endanger national security; or
- g. That it is in the public interest to detain the accused person in custody.”

16. Accused does not deny that he was charged with the murder of his brother in Meru CR Case No 59 of 2008 which case was subsequently withdrawn after witnesses were allegedly threatened.

17. Accused has also not denied that his deceased's brother's wife Karambu was subsequently murdered under unclear circumstances.

18. Accused has similarly not refuted that in 2015, he took his mother Elizabeth Njagi to stay with him in Kwale and she disappeared never to be seen again

19. Accused has additionally not challenged the allegation that he bought land in Kwale for his relative one Daniel Njagi who upon relocating to Kwale died after he was gunned down under unclear circumstances

20. This court appreciates that accused is innocent until proven otherwise and he has a constitutional right to be released on bond during the pendency of the trial.



21. However, accused was previously charged with the murder of his brother though the case was withdrawn. He is now charged with the murder of his sister and the family members apprehension that he is likely to harm other family members cannot in the circumstances of this case go unheeded.
22. Other allegations made against accused that involve deaths of his family members and the disappearances of his mother who was in his custody are grave although he has not been charged with any.
23. From the foregoing, I find that the prosecution has placed before the court sufficient material that raise reasonable apprehension that accused is not suitable to be released on bond as at now. Accused is however at liberty to renew his application for bond at a later date in the course of the hearing.
24. Accused shall therefore remain in custody during the trial or until further orders of the court.

**DELIVERED AT MERU THIS 30<sup>TH</sup> DAY OF MARCH 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Kinoti

Accused - Present

For the Accused - Ms. Maore Advocate

For the State - Ms. Rita (PC 1)

