



**Republic v Njoroge & another (Criminal Case E015 of 2023)
[2023] KEHC 21417 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21417 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E015 OF 2023
CW GITHUA, J
JULY 26, 2023**

BETWEEN

REPUBLIC RESPONDENT

AND

LABAN MWANGI NJOROGE 1ST APPLICANT

FAITH WANJIKU GICHOHI 2ND APPLICANT

RULING

1. The accused persons, Laban Mwangi Njoroge and Faith Wanjiku Gichohi are facing the charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on May 4, 2023 at Kiranga village in Kandara Sub-county of Murang'a County, they murdered Samuel Mburu Wanjiku.
2. The accused persons were arraigned before the court for plea taking on July 4, 2023 and they each denied the charge. On the same day, learned counsel for the 1st accused, Ms Kabata and learned counsel for the 2nd accused Mr. Warutere, made an oral application seeking that both accused persons be admitted to bond or bail pending their trial. On her part, Ms Kabata submitted that the 1st accused ought to be released on bond because he was not a flight risk as he had surrendered himself to the police; that he was a breadwinner for his young family and he also took care of his elderly parents.
3. On behalf of the 2nd accused, Mr Warutere submitted that she was a mother of five children who were currently being taken care of by her elderly mother; that she was not a flight risk as she had a fixed abode. In response to the affidavit sworn by the investigating officer in opposition to the accused persons' application for bond, Mr Warutere submitted that the second accused's brother one David Mburu was willing to accommodate the accused in his home for the duration of the trial and if released, the accused will live in Nairobi and will not therefore interfere with prosecution witnesses.



4. In contesting the applications made by each accused, learned prosecution counsel Ms Muriu relied on the depositions made by PC Paul Kamau, the investigating officer in his affidavit sworn on July 7, 2023. She stated that if released, the accused persons lives may be in danger given the proximity between them and the victim's family; that there were suspects who were still at large and if released, the accused persons were likely to interfere with investigations. She requested the court to call for a pre-bail report to give the court an independent analysis of the situation on the ground to assist it in making a decision on the application.
5. A pre-bail report in respect of each accused person was filed on July 20, 2023. Both reports supported the averment made by PC Paul Kamau that the accused persons and the victim's family were neighbours and that due to tension in their community created by the incident in which the deceased person died, if released, the accused persons' safety cannot be guaranteed. The investigating officer further averred that if released, the accused persons will interfere with suspects who are still at large and prosecution witnesses who are their relatives.
6. In his affidavit sworn on July 7, 2023 in response to depositions made in the investigating officer's affidavit, accused 1 denied that he was a flight risk and stated that he was arrested after presenting himself to Kandara Police Station to record a statement. He also deposed that if released, he will not go back to Kiranga village where the incident occurred but will live with his sister one Racheal Wanjiku Njoroge in her home in Ruiru for the duration of the trial. He denied that he will interfere with witnesses as alleged by the prosecution.
7. The 2nd accused also swore an affidavit dated July 13, 2023 in which she deposed that she had a constitutional right to be admitted to bond pending trial and that no compelling reasons had been disclosed in PC Paul Kamau's affidavit to justify denial of that right; that if released, she will not abscond and her life will not be in danger as she will relocate to live with her brother one David Mburu Gichohi in his home in Nairobi.
8. I have carefully considered the application made in respect of each of the accused persons; the brief oral submissions made by their learned counsel in support thereof as well as the averments in their supporting affidavits. I have also considered the depositions made by the investigating officer in his affidavit in opposition to the accused persons' application together with the oral submissions made by Ms. Muriu. I have also taken note of the content of the pre-bail reports. And although I agree with the 2nd accused's averment that pre-bail reports are not binding on this court, it is my view that they offer useful independent information that guide courts in making just determinations in applications such as the one before this court.
9. That said, it is trite that all arrested and accused persons have a constitutional right to be admitted to bond or bail on reasonable terms unless the prosecution demonstrated to the satisfaction of the court that compelling reasons existed in the case in question to justify denial of bond or bail pending trial or investigations. This is the import of Article 49 (1) (h) of the *Constitution of Kenya 2010*.
10. The constitution does not however define what constitutes compelling reasons and this is left to the determination of the court depending on the facts and circumstances of each case. The court of Appeal in *Michael Juma Oyamo & Another v Republic* (2019) eKLR offered guidance in this matter when it defined the term "compelling reasons" as follows;

“The term 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 standards set by the Constitution...”

11. In exercising its discretion in deciding whether to allow or refuse an application for bond pending trial, the court is guided by several factors the most important one being whether or not an accused person if released will abscond his trial. Other factors that courts bear in mind are enumerated in the Kenya *Judiciary’s Bail and Bond Policy Guidelines of 2015* and Section 123 A of the *Criminal Procedure Code* which includes whether if released, the accused will interfere with investigations or potential prosecution witnesses; whether the accused will threaten the safety of victims of the crime and whether it was necessary to deny the accused person bond in the public interest or for his or her own protection.
12. In this case, though the prosecution has claimed that if released the accused persons are likely to interfere with investigations and prosecution witnesses, the prosecution has not availed any evidence to substantiate that claim. The prosecution has not identified the witnesses it claims the accused persons if released are likely to interfere with and how that was likely to be done. Mere sweeping and unsubstantiated allegations cannot in my view suffice to meet the threshold of the compelling reasons envisaged by the constitution to warrant denial of an accused person’s constitutional right to bond pending trial.
13. Regarding the views expressed by members of the victim’s family that the accused persons should continue to be detained in custody to give them time to heal from the pain of losing their loved one, though I truly empathize with them, it must be remembered that the fact that the accused persons were arrested in connection with the deceased’s murder does not by itself mean that they are guilty of the crime they are accused of. The accused persons are in law just suspects who are presumed to be innocent until proven guilty.
14. Lastly, the prosecution through the investigating officer has asserted that there is hostility towards the accused persons in the village where the incident occurred and if released, their safety cannot be guaranteed. This assertion has been buttressed in the pre-bail reports filed for each accused person. This claim appears credible considering that the incident in which the deceased died occurred on May 4, 2023 about two months ago. This in my view would have constituted compelling reasons to militate against admission of the accused persons to bond since as I have previously held, an accused person’s life, just like any other life, is sacrosanct and must be protected at all costs. But in this case, the possibility that their lives or safety will be in danger if released is minimal since they have offered to relocate from their residences in Kiranga Village to live with close relatives in far off places.
15. In view of the foregoing, I am satisfied that the accused persons have demonstrated that there are no compelling reasons in this case to justify denial of enjoyment of their constitutional right to bond or bail pending trial. Consequently, their application is allowed on the following conditions;
 - i. Each accused shall be released upon executing a bond of Kshs 500,000 together with one Surety of a similar amount. The surety will be approved by the Deputy Registrar of this court.
 - ii. Upon release, the accused persons shall not contact members of the victim’s family or interfere in any way with potential prosecution witnesses.
 - iii. Upon release, the accused persons shall relocate from their respective residencies in Kiranga village and shall secure alternative accommodation for the duration of the trial or until further orders are made by this court.

In the event that *Racheal Wanjiku Njoroge* and *David Mburu Gichohi* will not volunteer to be the accused person’s sureties, their full contact details shall be taken and put on the court record in addition to those of persons who will be approved to be their sureties.



- iv. The accused persons shall attend this court on all hearing dates and whenever required by the court.
- v. Failure to comply with any of the conditions set in (ii), iii) and iv) above shall render the bond granted herein liable to cancellation.
- vi. Any party is at liberty to apply for further orders.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 26th day of July 2023.

In the presence of:

Ms. Kabata for the 1st Accused

Mr. Warutere for the 2nd Accused

Ms. Muriu for the State

Mr. Quinteen Court Assistant

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