



**Republic v Njuguna & another (Criminal Case E022 of 2023)
[2023] KEHC 22755 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E022 OF 2023
PM MULWA, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL KAMAU NJUGUNA 1ST ACCUSED

KENNEDY WAWERU NJUGUNA 2ND ACCUSED

RULING

1. According to the information filed in court on July 3, 2023, the two accused persons herein were charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. The particulars of the offence are that on the 27th day of June 2019 at Murera Area in Juja Sub-county within Kiambu County, jointly with others not before court they murdered No 107xxx PC Stephen Kairu.
2. According to the court records the accused persons underwent mental assessment on July 11, 2023 and were found fit to plead.
3. They both took plea on July 12, 2023 and denied the charge. A plea of not guilty was entered.
4. Mr Mugo, counsel for both accused persons urged the court to grant them reasonable bail terms. He submitted that initially the accused persons had been charged in Kiambu CM's Criminal Case No 1813 of 2019 where they had been granted bond and had faithfully attended court. Counsel contended that the accused were not a flight risk.
5. Mr Muriuki, the state counsel informed the court that he was aware that the accused had been charge with the offence of robbery with violence in the lower court and that that case had been withdrawn. He urged the court to call for pre-bail reports for guidance.



6. Pre-bail reports in respect of each accused person were filed on August 29, 2023. The reports note that the accused persons are brothers and the family is supportive and willing to deposit securities for their release on bond and ensure they attend court whenever required. The deceased was a police officer and the family has undergone psychological, social and financial trauma since his demise. The family would wish that the accused remain in custody and the hearing of the case be expedited citing the possibility of interfering with witnesses.
7. Article 49(1)(h) of the Constitution provides that: -
"An accused person has the right...: -
(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released."
8. The right to bail is not absolute and may be denied if there are compelling reasons established by the prosecution.
9. In this case the prosecution has no compelling reasons to oppose bail. The family of the accused is willing to ensure the accused complies with the set conditions and attends court when required.
10. The Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 at p 25 sets out judicial policy on bail as follows: -
The following procedures should apply to the bail hearing: -
 - 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.
11. The pre-bail report states that the two accused had been charged with the offence of robbery with violence in the lower court but they were later discharged under section 87A CPC. That during the pendency of the lower court case, they attended court without fail.
12. Considering the circumstances of this case and in the absence of any compelling reasons, I allow the application for the release of the accused on bail pending trial.
13. The accused persons, may each be released on a bond of Kshs 1,000,000/= with one surety of a similar amount. And they shall not interfere with witnesses.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 28TH DAY OF SEPTEMBER, 2023.

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P.M. MULWA
JUDGE

