



**Republic v Wanjira alias Njoroge wa Wanja (Criminal Case
E006 of 2024) [2023] KEHC 27623 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 27623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E006 OF 2024
DO CHEPKWONY, J
NOVEMBER 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ELIAS NJOROGE WANJIRA ALIAS NJOROGE WA WANJA ACCUSED

RULING

1. The Accused, Elias Njoroge Wanjira alias Njoroge wa Wanja is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of offence are that:-

“On the night of 24th -25th February, 2024 at Kagwe Shopping Centre Kagwe Location in Lari Sub county, within Kiambu County, the accused murdered Philisilla Syokwili Mwaluko alias Irene.”

2. On 20th March, 2024, the accused was arraigned in court and was remanded in custody after being informed of the reason to await mental assessment and assignment of Legal Representation. Upon being assigned Legal Representation and found fit to plead, the Accused person pleaded ‘Not Guilty’ to the offence of Murder.
3. His Counsel, M/S Karubo orally urged the court to grant him reasonable bail and bond terms stating that the accused was not a flight risk, has a fixed abode and is self-employed.
4. On its part, the State through its counsel, M/S Ndeda urged the court to order for a pre bail report to be called for before the accused can be released so as to ascertain whether he has a place of abode and to consider the sentiments of the victim’s family. The court then called for a Pre-Bail Report to be prepared and filed in court and this was done on 8th May 2024.



Analysis and Determination

5. In determining an application by an accused to be released on bond and bail terms, the starting point is Article 49(1)(h) of the Constitution it which 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.’

6. From the provision, it is clear that while the accused is guaranteed a right to be released on bond/ bail, this right is not absolute as the court is required to establish that there are no compelling reasons sufficient enough to warrant the denial of bail and bond terms for an accused. In the case of Republic -vs- Joseph Thiongo Waweru & 17 Others [2017] eKLR, the Court defined ‘compelling reasons’ as follows:-

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

7. Section 123A of the Criminal Procedure Code also provides various factors which ought to be considered in determining whether or not to release an accused on bail and bond and they include:-

1. Subject to Article 49(1)(h) of the Constitution and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
 - (b) should be kept in custody for his own protection.

8. According to the probation officer, the Accused is a 23 year old man who was working as a casual worker and does not possess any skill. It is reported that he shall adhere to the conditions that the court will set if he is granted bond and bail terms as his family is very supportive and have agreed to pool resources to get him out on bail. According to the area administration and community, he is positively recommended for release on bond since he is not capable to jump bail. It stated that the victim’s family oppose the release of the accused on bond terms.



9. The Probation Officer has recommended that with the accused having a supportive family and a permanent residential address, he is not a threat to the victim nor the community and therefore the accused can benefit from bail and bond terms.
10. In this case, the court has considered the oral application made by the Accused person and the Pre Bail Information Report filed on 8th May, 2024.
11. From all the information availed to this Court, it has been confirmed that the accused has a fixed place of abode and a supportive family where members are willing to support him. There is no evidence or information to court that the accused will interfere with the witnesses. The community ties are also favourable to the Accused and hence the recommendations by the Probation Officer are favourable to him.
12. In the circumstances the court proceeds to allow the accused person's release on bond and on the following terms:-
 - a. The accused person may be released on a bond of Kshs. 500,000/= with one surety of a similar amount.
 - b. In the alternative, the accused may be released on cash bail of Kshs.300,000/=.
 - c. The accused to provide full particulars of a contact person.
 - d. The accused to provide full particulars of his place of abode during the trial and to the determination of the same.
 - e. The accused to attend court as and whenever he is required until the determination of the case.
 - f. Failure to comply with orders (c), (d) and (e), will render the bond/bail terms cancelled and he will be remanded in custody.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF MAY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Ndeda counsel for the State

No appearance for and by counsel for accused

Accused - Present

Court Assistant - Martin

