



REPUBLIC OF KENYA



KENYA LAW
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**Njeri v Republic (Criminal Case 51 of 2019)
[2022] KEHC 594 (KLR) (Crim) (4 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 51 OF 2019
DO CHEPKWONY, J
APRIL 4, 2022**

BETWEEN

DANIEL GITHINJI NJERI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Daniel Githinji Njeri, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.

The facts are that:-

“On December 24, 2017 in Zimmerman Estate within Nairobi County with others not before court murdered Joseph Ng’ethe Kiarie”.

2. The Applicant pleaded “Not Guilty” to the charge and on November 7, 2019, the Applicant has denied release on bail/bond pending trial on the ground that he was likely to interfere with witnesses if so granted bail. He reviewed his application to be granted bail pending trial and again the same was denied vide a Ruling dated July 19, 2021.
3. The Applicant has once again filed a Notice of Motion application dated January 20, 2022 seeking a review of the previous Ruling and he be admitted to bond/bail pending trial. The application is supported by an affidavit sworn by the Applicant on the even date.



4. This court had by its Ruling dated July 19, 2021 declined to grant the Applicant bail and stated as follows:-

“The facts in support of the application are not in dispute, the Applicant absconded and disappeared when he is alleged to have committed the offence. He went underground for two years before he was apprehended and brought to the court. For an Applicant to succeed in application for review of a decision to deny him bail pending trial, he must establish the existence of new evidence or changed circumstances that will persuade the court to change its initial findings. In the present application, it is clear that the Applicant has not raised any new evidence to support the assertions made in his affidavit for the review of the order denying him bail pending trial; neither has he laid before the court convincing reasons that constitute changed circumstances that will persuade this court to find in his favor...”

5. The application is opposed by the State on the basis that the accused is a flight risk.

6. The application was disposed off by way of written submissions. The Applicant filed his on February 18, 2022. Those of the Respondent are not on record.

7. In his submissions, counsel for the Applicant has stated that the witnesses who the Applicant is alleged will be interfered with are Prison Warders who are well versed with the Criminal justice system and can report if the accused person tries to contact or interfere with them. The Applicant’s counsel has cited constitutional provisions that guarantee an accused person the right to be released on bail unless it is shown that there are compelling reasons for him or her not to be released on bail.

8. The submissions by the Respondent are not on record.

9. I have considered the application, the affidavits in support thereof, the submissions made and the authorities relied upon. The issue for consideration in this matter is whether there are any changed circumstances demonstrated by the Applicant to warrant review of denied bail application.

10. In the case *Republic v Francis Maina Wairimu* [2020] eKLR the court held that: -

“In an application for review of the denial of bail the Applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”

11. Additionally, in the same vein, it was held in the case *Republic v Diana Suleiman Said & another* [2014] eKLR as follows: -

“The changed circumstances test is one of a common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful Applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused”

12. It is trite that bail is a constitutional right which should not be denied to an accused unless there are compelling reasons. However, the principle consideration when granting bail is to establish whether the accused will turn up for his trial.



13. The prosecution opposed the release of the Applicant on the main ground that he is a flight risk. This was informed by the fact that before he was apprehended and brought to court, the Applicant after the commission of the offence absconded and went underground for two years. This had even led to a delay in having the case prosecuted.
14. In my view, the Applicant has failed to demonstrate changed circumstances in his application that justify review to be released on bail/bond. The situation, the factors and the concerns that led to the Applicant being denied bail still subsist now as were when the first bail application was heard.
15. Having listened to the Application counsel in his oral submissions, I have also read through the written submissions filed and find that the Applicant has only addressed court on the principles and the law on bail/bond but has not provided any evidence to demonstrate the change in circumstances as to justify the review to be released on bail/bond. He has not provided any evidence to allay the fears by the prosecution that he will fail to attend court whenever he is required. I find the situation, factors and concern that led to his being denied bail still subsist as they were when the first bail application was heard.
16. In the circumstances, I find the application dated 20th January, 2022 lacks merit and is hereby dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF APRIL 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Gikonyo counsel for State

Mr. Omenke counsel for accused

Accused – present

Court Assistant - Gitonga

