



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njoroge (Criminal Case 20 of 2020)
[2022] KEHC 11153 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 20 OF 2020
MM KASANGO, J
JULY 27, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL GITAU NJOROGE ACCUSED

RULING

1. Samuel Gitau Njoroge, the accused herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The accused on 24th June, 2020 pleaded not guilty to offence. The court requested the probation to prepare a bail report to assist the court determine the terms, if any of the release of the accused pending his trial on bail/bond.
2. The probation's pre-bail report was presented to the court on 20th August, 2020. On that day, Justice C. Meoli stated thus:-

“Pre-bail report contents noted. By consent, bail question to be held in abeyance for a month in view of the said content.”
3. The accused on 9th November, 2020 renewed his request to be released pending conclusion of his trial on bail/bond. The court, on that day made the following order:-

“The bail application is held in abeyance because of the concerns of the safety of accused expressed in pre-bail probation report.”
4. The accused has presented before this Court an application dated 6th July, 2022 seeking an order to review the ruling on his application for bail/bond. The application is supported by the affidavit of Marima Ole Lilau. That deponent is an uncle of the accused. He owns a farm in Nanyuki. He deponed that he is willing to have the accused reside and work at his farm in Nanyuki if granted bond/bail.



5. The concern of this Court, on each occasion the accused has requested to be released on bail/bond, is that the prebail probation report indicated that, and it was confirmed by the Chief Migwi Murengeti, location the community where the accused comes from, had threatened to harm the accused because of the charges he faces. The accused has a right although not absolute right to be released on bail/bond. The constitution confers that right under Article 49(1)(h) which provides:-

“ 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. The accused is facing a serious charge and the gravity of the offence can be considered when the court makes a determination on bail/bond application: See the case Republic vs. Robert Zipor Nzilu(2018) eKLR:-

“ 10. Gravity of the offence as a consideration was appreciated by Mbogholi Msagha, J in Criminal Application No. 319 of 2002 Priscilla Jemutai Kolonge vs. Republic (unreported) at page 3, wherein he held as follows:

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.’”

7. In view of the fact the accused has a right to be released on bail/bond and because the prosecution did not provide any compelling reason why he should not be released; and because the accused will not reside where he ordinarily resides he will be granted bail/bond.

Disposition

8. Samuel Gitau Njoroge shall be released on condition he does not reside within Kiambu on his own bond of Kshs.2,000,000 (two million) with three sureties of similar amount each.

9. The hearing of further prosecution’s case is hereby confirmed for 6th December, 2022. At the reading of this Ruling, a mention date before the Deputy Registrar shall be fixed.

RULING DATED AND DELIVERED AT KIAMBU THIS 27TH DAY OF JULY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

Accused :- Samuel Gitau Njoroge – Present

For accused : - Mr. Nyatichi

For DPP :- Mr. Kasyoka

RULING delivered virtually



MARY KASANGO
JUDGE

