



**Njahi v Republic (Criminal Case E054 of 2021)
[2022] KEHC 13102 (KLR) (Crim) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL CASE E054 OF 2021

JM BWONWONG'A, J

SEPTEMBER 22, 2022

(BEING AN APPLICATION FOR BAIL PENDING TRIAL)

BETWEEN

MARTIN NGOBU NJAHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya. The particulars of the offence are that on the night of 30th and July 31, 2021, at Bulls K Annex guest house within Nairobi central business district in Nairobi county murdered Elizabeth Wairimu Ng'ang'a on August 18, 2021.
He was arraigned in court and pleaded not guilty.
2. *Vide* notice of motion dated May 30, 2022, the accused sought to be admitted to bail pending trial. In his supporting affidavit, the accused has averred as follows. He is the sole breadwinner of his extended family. Since his arrest, one of his children has since dropped out of school, and is in need of medical attention. That the child's right to the highest attainable standard of health has been put at risk due to his continuous incarceration. The offence charged is bailable and he is ready and willing to abide by the terms imposed by the court. Further, there are no compelling reasons for the denial of bail.
3. In opposition to the application for bail, no 80664 PC Andrew Njagi, one of the investigating officers, swore an affidavit dated September 24, 2021. He averred as follows. That after the commission of the crime he was charged with, the accused tried to flee from the scene of crime. Given that the accused was caught before he could flee, it is highly likely that the accused will flee from the jurisdiction of the



court, if released on bail. Further, the accused's place of abode is unknown. He has averred that it is in the interest of justice to deny the accused bail pending the hearing and determination of his case.

The submissions of the applicant

4. Messrs Lutwaji Achieng and Kiprop Advocates for the applicant filed written submissions dated July 1, 2022 in support of the application. It was submitted for the applicant that the accused person is entitled to bail pending trial and that the presumption of innocence operates in his favour. Further, there are no compelling reasons advanced by the prosecution to deny him bail. It was also contended that the continued detention of the accused has compromised the quality of his defence bearing in mind the gravity of the offence he is charged with. Further that there are relatives who are willing to stand surety for him since he is not a flight risk.

The submissions of the respondent

5. Ms Peris Maina, learned prosecution counsel for the respondent submitted that the accused is a flight risk. She argued that the conduct of the accused person in attempting to flee from the scene of crime after the fateful incident illustrates his guilt mind and makes it difficult for the court to trace him in the event he absconds. She further submitted that his place of abode also remains unknown and this increases his chances of absconding, if admitted to bail. She urged the court to deny the accused bail pending the hearing and determination of the case.

Analysis and determination.

6. Bail is a constitutional right. Article 49 (1) (h) of the *Constitution of Kenya* is explicit that unless there are compelling reasons, an accused person ought to be released on bail as a matter of right pending the hearing and determination of his/her case. The Constitution provides that:

“An arrested person has a right-to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”

7. It is therefore upon the prosecution to prove that there are compelling reasons to deny the accused bail.
8. In opposition to the application for bail/bond, the investigating officer claimed that the accused is a flight risk and has place of fixed abode. He has also averred that the accused tried to flee from the scene of crime. That it would be difficult to trace him in the event he absconds.
9. The court called for a pre-bail report which was filed by the probation officer. In the report, it was indicated that the accused was a father of two children, who were school going and that the home environment was conducive for his release. His father, sister and grandmother were willing to stand surety for him. It was indicated therein that the community was not hostile towards his release.
10. According to the statement of the victim, the victims are not opposed to the grant of bail but urged the court to ensure the accused does not interfere with the witnesses. In conclusion it was stated that the accused person resides at Kaloleni in Nairobi county, where he resides with his wife and two children. The probation officer therefore concluded that he is not a flight risk.
11. After taking all the foregoing circumstances, I find that the accused is not a flight risk. I find that on the evidence and the applicable law, that there are no compelling reasons to deny bail/bond to the accused.
12. In the premises, the application of the accused succeeds and is hereby granted bail in the sum of kshs 200,000/- with a surety of a similar amount to be approved by the deputy registrar of this court.



13. In the alternative to foregoing, the accused may deposit cash bail of shs 100,000/-
14. In the interim period the accused will be remanded in custody until he complies with the terms of his release on bail.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr Mwale for the accused/applicant

Ms Peris Maina for the Respondent

