



**Republic v Wangui (Criminal Case E012 of 2022)
[2022] KEHC 12985 (KLR) (Crim) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 12985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E012 OF 2022
LN MUTENDE, J
SEPTEMBER 22, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL MWANGI WANGUI ACCUSED

RULING

1. Samuel Mwangi Wangui, the accused/applicant is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal code*. Particulars of the information being that on the 28th day of December, 2021, at Mihing’o within Njiru area he murdered Eunice Ngina Kiveva.
2. The applicant seeks to be released on bail/bond pending trial on reasonable terms on grounds that he has been lingering and languishing in custody since January 23, 2022, which is an infringement of his constitutional right. That he is an orphan aged 23 years who comes from a very poor background having been raised by his grandmother in Kayole, Matopeni. That: he is not a flight risk, having not held any passport and being a bodaboda rider within Kayole; he should be presumed innocent until proven guilty; he will attend court or any authority as required. That there being no compelling reason to deny him bail, it is in the interest of justice for the applicant to be granted bail so that he can take care of his failing health and young family to which he is the sole breadwinner.
3. The application remains unopposed since the State failed to file any response, despite being given the opportunity to do so.
4. The application was canvassed through written submissions. It was urged by Ms. Odembo, learned counsel for the applicant that there are no compelling reasons requiring the applicant being denied bail. That the applicant will stay away from Mihang’o, the place where the incident occurred and reside at Ruiru, and, his grandmother, Scholastica will ensure he attends court.



5. An accused person's right to bail pending trial is a constitutional right as envisaged under Article 49 (1) (h) of the Constitution that provide as follows:-

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. It is also within the accused person's right to fair trial to be presumed innocent until he is convicted by a court of law. This means that any incarceration during trial must be informed by the law.

7. As clearly stated, the right under Article 49(1)(h) of the Constitution can be limited where the prosecution establishes compelling reasons in the case. In determining whether compelling reasons are existent, the court may be guided by the provisions of Section 123A of the Criminal Procedure Code, that stipulate as follows:

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. And, the *Judiciary's Bail and Bond Policy Guidelines*, 2015 which provides as follows:

- a. The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- 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.
9. It is trite that the burden lies on the prosecution to establish compelling reasons and it never falls on the accused. The prosecution having not suggested that there exists a reason why the applicant's right to liberty should be limited, there is absolutely no reason why the accused/applicant should be incarcerated during trial.
10. In the case of *Republic vs. Danson Mgunya & Another* (2010) eKLR Ibrahim J (As he then was) stated that the principle that the liberty of accused should only be limited where there are compelling reasons not to be released and it is the duty of the state to demonstrate the same, and even then, each case must be decided on its own circumstances, touch and context.
11. In the premises, I grant the Applicant/Accused bond of Kenya Shillings Five Hundred Thousand (Ksh. 500,000/-) with a surety in an even sum.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 22ND DAY OF SEPTEMBER, 2022.

L. N. MUTENDE

JUDGE

In the presence of:

Court Assistant – Mutai

Accused

Ms. Gichuhi for ODPP

Ms. Odembo Celine for Accused

