



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 21 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH KINUTHIA NJOROGE.....ACCUSED

R U L I N G

1. **Joseph Kinuthia Njoroge** pleaded not guilty to a charge of **Murder** contrary to Section 203 as read with Section 204 of the Penal Code. His trial is yet to commence. He has applied for bail pending trial.

2. The state did not oppose bail but requested that the bail terms be strict.

ANALYSIS AND DETERMINATION

3. The Accused by his affidavit in support of his application undertook not to interfere with the prosecution's witnesses; he deponed he is not a flight risk; that he has a business and he is a resident of Riabai Ward in Kiambu County; and that he shall abide with the terms of bail.

4. Under Article 49(1) (h) of the Constitution an Accused person is afforded a right to be released on bail, pending a charge or trial, unless there are compelling reasons not to be released. The case **Simindei Naurori & Another –v- Republic (2016) e KLR** discussed the ramification of Article 49(1) (h) of the Constitution thus:

*“The Constitution under Article 49(1)(h) grants any person charged with a criminal offence the right to be released on bail pending trial unless there are compelling reasons to make the court reach a contrary finding. The Constitution does not define what constitutes “compelling reasons”. However, courts have rendered decisions that articulate what constitutes compelling reasons and include the following: the nature of the charge, the seriousness of the punishment, the strength of the prosecution case, the character and antecedents of the accused, the failure of the accused to honour bail terms previously granted, the likelihood that the Accused will fail to attend court during trial, the likelihood of interfering with witnesses, the need to protect the victim of crime and the accused person, the relationship between the accused and potential witnesses, the age of the accused, the flight risk, whether the accused person is gainfully employed, public order, peace and security imperatives. (See **ALHAJI MUJAHID DUKUBO-ASARIN Vs. FEDERAL REPUBLIC OF NIGERIA S.C. 20A/2006**).”*

5. In determining an application for bail the court ought to be guided by what was discussed by Justice Chesoni (as he then was) in the case **Ng’ang’a –v- Republic (1985) KLR 451** thus:

“The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should grant bail to the accused person unless it is shown by the prosecution that there are substantial grounds for believing that:

i. The accused will fail to turn up at his trial or to surrender to custody;

ii. The accused may commit further offences; or

iii. He or she will obstruct the course of justice.

iv. The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

v. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;

vi. The strength of the prosecution case;

vii. The character and antecedents of the accused;

viii. The likelihood of the accused interfering with prosecution witnesses.”

6. The court obtained a pre-bail probation officer’s report to help determine the application for bail. That report revealed the Accused family is not favourable to the Accused being granted bail because they are of the view that he is irresponsible, mixes with anti-social peers, he has been in conflict with the law having served a seven-year jail term, and, most importantly, that after the offence was committed the local community burnt the Accused’s house and therefore the accused’s life is in danger from that community. It would follow that one of the grounds in the case **Ng’ang’a -v- Republic** (supra) which the court should consider while determining a bail application, that is “the character and antecedent of the Accused”, does not favour the Applicant’s application.

7. There are, therefore, compelling reasons why bail should be denied to the Accused. The Accused application dated 9th November 2020 is declined and dismissed.

SIGNED AT KIAMBU AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2020.

MARY KASANGO

JUDGE

18th December 2020

Before Justice Mary Kasango

C/A - Kevin

Accused - **JOSEPH KINUTHIA NJOROGE** - Present

For Accused - Mr. Njehu

For the State - Mr. Kasyoka

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE