



REPUBLIC OF KENYA



KENYA LAW
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**Njagi v Republic (Criminal Case E005 of 2025)
[2025] KEHC 11161 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E005 OF 2025
RM MWONGO, J
JULY 23, 2025**

BETWEEN

JOSEPH NJIRU NJAGI ACCUSED

AND

REPUBLIC PROSECUTION

RULING

Background

1. The applicant is charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. The particulars are that on 24th December 2024 at Kanduku village, Gichiche sub-location in Mbeere South sub-county within Embu County, the accused murdered Joseph Maringa. The accused pleaded not guilty and the plea was duly entered.

The Application

2. The applicant filed a notice of motion dated 21st February 2025 seeking that the Honourable court be pleased to grant him reasonable bail/bond terms. The application as based on the provisions of Articles 19, 20, 23(1), 49(1)(h) and 50(2)(a) of *the Constitution*. The applicant states that he is an 80-year-old man who is not a flight risk and that he will comply with bond/bail terms set by court. He is also willing to surrender his travel documents to the authorities hence there are no compelling reasons for the accused to be denied bail/bond.

Response

3. The application was opposed through an affidavit sworn by CI Janet Akelo, in which she gave several reasons why the accused should not be released on bail/bond. She deposed that the accused has influence upon the prosecution witnesses who are members of his family. That upon a visit to the accused's home, she learned that the community is angered by the accused's actions so much so that



they had vandalized his house. She learned from the community that the accused had allegedly killed another person before but the police could not find sufficient evidence to prosecute him for murder. It was evident that the accused exhibited bouts of anger through random outbursts and she feared that if he is released on bail, he will be lynched by the community.

Pre-bail Probation Officer's Report

4. According to the Probation Officer's report, the accused is a repeat offender, having previously served a sentence of life imprisonment for manslaughter. The accused's family is stated to be relieved that he is away from home following the incident. His wife expressed her suffering in the accused's hands since he was abusive. The accused was living in a separate house from his wife, which house was vandalized by villagers following the incident.
5. The accused's family feels that he is better off not being released on bail because his life is at risk. The community and the victim's family expressed their hatred for the accused and wished that he is not released on bail. They threatened to lynch him if he is released. The report does not recommend release of the accused on bail.

Issue for Determination

6. The issue for determination is whether the applicant should be released on bail/bond.

Analysis and Determination.

7. An accused person is categorically presumed innocent by the law until proven guilty. It is on this presumption that applications for bail are founded. The Judiciary Bail and Bond Policy Guidelines recommend that:

“The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.”

8. However, the right to bail is not without limits as provided under Article 49(1)(h) of *the Constitution* which provides for the right to bail pending trial as follows:

“An arrested person has the 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.”

9. The court may deny bail under certain circumstances where the court is satisfied that there are compelling reasons to deny bail. Section 123A of the *Criminal Procedure Code* provides instances where bail may not be granted, 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 fulfillment 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.”

10. The Bail and Bond Policy Guidelines provide guidance on factors the court can consider in assessing whether or not to grant bail. They are, inter alia;

- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- b. The strength of the prosecution case.
- c. The character and antecedents of the accused person.
- d. The failure of the accused person to observe bail or bond terms.
- e. The likelihood of interfering with witnesses.
- f. The need to protect the victim or victims of the crime.
- g. The relationship between the accused person and the potential witnesses.
- h. The best interest of child offenders.
- i. The accused person is a flight risk.
- j. Whether the accused person is gainfully employed.
- k. Public order, peace and security.
- l. Protection of the accused persons.

11. With this in mind, it is noted that some of the accused's family members are prosecution witnesses. The deceased is a long-time neighbor who was allegedly killed in his compound by the accused. This close relationship between the accused and possible witnesses is a strong factor to consider given that he is their husband and father-in-law. The investigating officer's apprehension that the applicant will interfere with witnesses, cannot be ignored. In fact, it may well be a compelling reason to deny bail pending trial.

12. A compelling reason is not merely an allegation. In the case of Michael Juma Oyamo & another v Republic [2019] KECA 953 (KLR) the Court of Appeal adopted the meaning of the phrase "compelling reasons" as was stated in the case of R v Joktan Malende and 3 Others Criminal Case No. 55 of 2009 where the Learned Judge held as thus:

“..... The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail



should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by *the Constitution*.”

13. Previous courts have addressed themselves on the issue of whether interference with witnesses is a compelling ground to deny bail. In the case of Republic v. Gerald Mutuku Nyalita & Another (2015) eKLR it held that; -

“In considering the likelihood of interference with witnesses as a compelling ground to refuse bail in terms of Article 49 (1) (h) of *the Constitution* of Kenya, the Prosecution must, in my view, demonstrate a more than whimsical probability of interference. It must be shown that the accused persons are in such close family, filial or other relationship which creates an environment of control and influence of the witness by the accused person such as to interfere with the ability of the witness to give evidence before the court in a free and truthful manner thereby affecting either the credibility of the witness in his or her testimony before the court or the very ability of the witness to attend court. The tenderness of age or the mental acuity of the witness may be factors to be considered in the determination as to the likelihood of interference. The nature of the testimony of the witnesses – as eye-witness or circumstantial – is also relevant...”

14. Similarly, in the case of Republic v Patrick Ntarangwi [2020] KEHC 2140 (KLR), the court held that:

“In considering the question of bail or bond, the court should balance the right of an accused, pursuant to the presumption of innocence, to be released on bail pending his trial against the public interest of prevention of crime and the right of the victims to access to justice. The right of the victims to access justice no doubt will be gravely affected if the prosecution witnesses are interfered with.”

Disposition

15. In the circumstances, it is my view that to grant bail to the applicant would mean to hinder justice itself on account of possible witness interference. The court should also consider the facts that: the applicant has previously been convicted and sentenced for manslaughter, and that the probation report indicates that the accused may be endangered if released. In my view, the application is for dismissal, presently, although the court may consider releasing the applicant on bail/bond terms at a later date when the key witnesses have already testified.

16. This is in line with the Bail and Bond Policy Guidelines, thus:

“4. 36 Courts shall inform accused persons of their rights to apply for review of bail decisions and conditions. Bail decisions and conditions should be reviewed on a regular basis, as the circumstances of the accused person and the case change.”

17. The application is thus dismissed as stated.

18. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 23RD DAY OF JULY, 2025.

R. MWONGO

JUDGE



Delivered in the presence of:

Accused - Joseph Njiru Njagi present in Court

Githinji for Accused

Ms. Nyika for the State

Francis Munyao - Court Assistant

