



**Republic v Njeru (Criminal Case E026 of 2025) [2025] KEHC 9642 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9642 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E026 OF 2025  
JM NANG'EA, J  
JULY 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EPHANTUS NJERU ..... ACCUSED**

**RULING**

1. The accused person has been arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge allege that on 09/06/2025 at London area, Nakuru west Sub County , in Nakuru County he murdered Daniel Nderitu Mwangi. He pleaded not guilty.
2. The Prosecution opposed release of the accused on bond/bail relying on an undated affidavit sworn by an Officer attached to the Independent Police Oversight Authority based in Nakuru (Leah Munene).
3. The defence Counsel (Mr. Mong'eri ) insists that the prosecution has not demonstrated compelling reasons militating against release of the accused person on bond/bail. Mr Mong'eri submitted that the accused has the right of release on bond/bail upon reasonable conditions pursuant to the provisions of Article 49(i) (h) of the *Constitution* of Kenya 2010. According to the Counsel, the prosecution's affidavit evidence does not disclose compelling reasons for rejection of the application.
4. The defence Counsel further states that the accused person is a public servant as police officer who, although currently interdicted, regularly reports to his bosses as instructed and thus not a flight risk.
5. Regarding an allegation in the prosecution affidavit that the accused is threatening or otherwise interfere with their witnesses through his agents, it is argued that there is no basis for such contention. It is pointed out that witness statements have not even been provided to the accused so that he may be said to have learnt of the identity of the witnesses. The court is told that , in any event, there are sufficient legal mechanisms for protection of witnesses including under the *Victims Impact Act*. The



court is also told that the accused has the right to be presumed innocent until proven guilty at trial, if at all.

6. The defence Counsel therefore submits that there is no sufficient factual and legal basis for denial of bond/bail.
7. Ms Mwaura (Prosecution Counsel) opposes the application. It is averred inter alia in the prosecution affidavit in opposition to bail/bond that the accused is threatening and therefore interfering with prosecution witnesses. The accused persons' safety if released would not also be guaranteed given public anger that allegedly sparked violent demonstrations over the subject killing, argue the prosecution.
8. The court is therefore urged to dismiss the defence application on these reasons said to be compelling for denial of bond/bail.
9. I have considered learned Counsel's rival arguments on the application. Article 49(1) (h) of the Constitution provides;

“An arrested person has the right-

To be released on bond or bail, on reasonable grounds, pending a charge or trial, unless there are compelling reasons not to be released”

Concise Oxford Dictionary defines “compelling” as “forcing or obliging to do something; bring about by force or pressure.”

10. Section 123A of the Criminal Procedure Code further stipulates thus;-

- “(i) 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 and seriousness of the charge;
  - 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.
  - e. 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.”

11. As held in the famous case of *Ng'ang'a vs Republic* (1985) KLR 451, the primary considerations before deciding whether or not to release an accused or arrested person on bond/bail is whether there are sufficient safeguards to guarantee attendance in court for trial.



12. If therefore there is convincing evidence that the accused herein will not attend trial if released; or that his interfering or would interfere with witnesses; or he are a flight risk; or that his security is at risk because of hostility from the public , then these are among grounds for denial of bond/bail [(see case law in *Republic vs Wanjiku & Another* (Criminal Case No. E002 of 2024 [2024] KEHC 4663 (KLR) (2 May 2024) (Ruling) among many other decided cases)].
13. I have considered the prosecution evidence and Counsel Submissions. The burden is on the prosecution to show on a balance of probability that compelling reasons exist to warrant denial of bond/bail to the accused person. No prima facie evidence is, however presented proving that the accused faces danger if released. Evidence of interference with or threats to witnesses is not also tendered. If there is real danger of such interference, I concur with the defence that protection measures including vide the Witnesses Protection Agency created by law and reduction of information relating to the concerned witnesses are at the prosecution's disposal. It is further shown that the accused is a flight risk given the unchallenged assertion by the defence Counsel that he is a Police Officer employed by the Government, and who regularly reports to his supervisors while on interdiction over this case.
14. I find in the circumstances that the prosecution failed to discharge the burden of demonstrating compelling reasons for denial of bond/bail. Consequently, the application is granted and the accused person will execute bond in the sum of Kshs. 1,000,000/= plus one Surety of a similar amount.
15. Ruling accordingly.

**J. M. NANG'EA, JUDGE.**

Ruling delivered this 1<sup>st</sup> day of July, 2025 in the presence of:

The Prosecution Counsel, Ms Mwaura

The Defence Counsel, Mr Mong'eri

Accused, present

The Court Assistant, Jeniffer.

**J. M. NANG'EA, JUDGE.**

