



**Njanja v Republic (Criminal Case E012 of 2023)
[2024] KEHC 2309 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2309 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E012 OF 2023
CW GITHUA, J
MARCH 6, 2024**

BETWEEN

ELIJAH MUTHII NJANJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Elijah Muthii Njanja, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
He took plea on 11th July 2023 and denied the charges.
2. On 28th February 2024, his learned counsel, Mr Kirubi made an oral application seeking that he be admitted to bond or bail on reasonable conditions pending his trial.
3. The prosecution opposed the application through a replying affidavit sworn by P.C Eric Gitonga, the investigating officer. The main reason advanced by the prosecution in its objection to the application is that the deceased was the accused's girlfriend and its key proposed witness is the deceased's daughter; that if released, accused is going to interfere with the said witness and his safety may be in danger as there was hostility against him from residents of Mukuyu Location where the incident leading to the death of the deceased occurred.
4. The application was argued orally before me on 28th February 2024. Learned counsel for the accused Mr Kirubi submitted that the grounds relied upon by the prosecution in opposing the application did not amount to compelling reasons to justify denial of bond. He submitted that the accused hails from Kirinyaga County and that if released, he will live there and will not go back to Makuyu where the victim's family resided; that he will therefore not be in contact with the witnesses and his safety will not be in danger.



5. In her submissions, learned prosecution counsel, Ms Muriu maintained her opposition to bond relying on the replying affidavit sworn by P.C Gitonga but added that, if the court was inclined to allow the application, it should be with a condition that the accused will live away from the place deceased's family resided and will not contact with its witnesses.
6. It is trite that under Article 49(1) (h) of the Constitution, an accused or arrested person has a right to be admitted to bond pending charge or trial if the prosecution did not demonstrate compelling reasons to warrant denial of bond.
7. As far as I know, there is no universal interpretation on what amounts to compelling reasons and each case must be decided on its own facts and circumstances. However, the court of appeal in Michael Juma Oyamo & Another v Republic [2019] eKLR provided guidance in this when it cited with approval the decision in R v Joktan Malende & 3 others Criminal case No 55 of 2009 in which the term 'compelling reasons' was defined as follows;

“..... 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.”
8. The reasons fronted by the prosecution in opposition to the application must in my view be juxtaposed with the accused's constitutional right to enjoy his liberty as he waited for conclusion of his trial in order to asses them and determine whether they were weighty enough to justify limitation of the accused's aforesaid right.
9. The pre-bail report confirms the prosecution's apprehension that if released, the accused may instil fear in its key witness who is the deceased's daughter or otherwise interfere with her evidence. But the report also confirms that the accused hails from Baricho in Kirinyaga County and that his brother had also offered to host him in Embu County during the trial.
10. Given the foregoing, although I have noted and fully appreciate the views expressed by the victim's family (contained in the pre- bail report) given that they're still mourning the loss of their loved one, it must be remembered that the accused person still enjoys his constitutional right to be presumed innocent until proven guilty.
11. The concerns by the prosecution regarding possible interference with its potential key witness as well as the fear that if released the accused's safety may be compromised if he went back to the place the offence was allegedly committed though valid are defused by the fact that it is not disputed that the accused has alternative places of residence in either Kirinyaga or Embu Counties and does not need to go back to the locus in quo if released on bond. C
12. In view of the foregoing, it is my view that the reasons relied on by the prosecution in this case do not amount to compelling reasons within the meaning contemplated by Article 49 (1) (h) of the Constitution since they can be countered by the imposition of appropriate bond terms which would ensure that the accused is prevented from getting into contact with the victim's family or prosecution's witnesses.

In the circumstances, I find merit in the application and it is hereby allowed on the following terms;

- i. The accused will be released upon executing a bond of Kshs 500,000 together with one surety of a similar amount.

The surety shall be approved by the Hon. Deputy Registrar of this court.



- ii. Once released, the accused will not reside in Makuyu location and will not contact, interfere or interact with potential prosecution witnesses in any way either directly or indirectly.
- iii. The accused shall attend the court whenever required.
- iv. In default of any of the above conditions, the accused's bond will be cancelled.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 6TH OF MARCH, 2024.

C.W GITHUA

JUDGE

In the presence of :

The accused

Mr. Kirubi for the accused

Ms. Nzuki for the State

Ms. Susan Waiganjo Court Assistant

