



**Njeu & another v Republic (Criminal Case E001 of 2024)
[2024] KEHC 3798 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E001 OF 2024**

LW GITARI, J

APRIL 18, 2024

BETWEEN

SAMUEL MURIUKI NJEU 1ST ACCUSED

KELVIN NJERU MUTHINJA 2ND ACCUSED

AND

REPUBLIC PROSECUTOR

RULING

1. This is a ruling on the application for bail by the accused person. The accused were charged in this court on 18/1/2024. The plea was taken on 22/1/2024 and they pleaded not guilty.
2. The learned Counsel on record for the accused applied for bond/bail for the accused contending that the 1st accused is twenty one 21 years old and a student at Kenyatta University. The second accused is a young man who graduated from Nairobi University recently and gotten a part time job. That they have fixed abode and have promised to abide by the bails terms.
3. The State opposed the application. The learned counsel Ms Njeru submitted that the deceased was also a young man who was even younger than accused. They are close relatives and the accused were uncles to the deceased. The court called for pre -bail reports on the accused and the same were filed on 19/3/2024. The report for Samuel Muriuki Njeru (1st Accused) states that he is a student at Kirinyaga University. He understands the seriousness of the offence. He pleads with the court to grant him bail and promises to attend court without fail until the matter is heard and determined.
4. On the other hand, the victim’s family oppose the release of the accused on bail citing him to be a threat to them and witnesses. The grandmother fears for her safety while the aunt states that he is likely to abscond.



5. The community is not opposed to the released of the accused on bail as he is not a threat to the community and the witnesses. They do not consider him a flight risk. The father is willing to stand surety for him. The report recommends that bail be considered at a later stage.
6. The report for Kelvin Njeru Muthinja (2nd accused) states that he pleads for a reasonable bond/bail and promises to attend court until the case is heard and determined. The victim's family are opposed to bail. The area Chief gave a positive report and opines that he may be released on bond. The mother of the accused is willing to stand surety for him. The victim's family are opposed to bail stating that the accused may harm them. The Probation Officer states that bond is not recommended as the offence was committed only two months ago.

1. I have considered the application. The right to bail is a constitutional right which may be denied if there be compelling reasons.

Article 49(1) (h) of *the Constitution* provides as follows:-

- (1) "An arrested 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."

Thus, the right to bail is not absolute as it may be denied if there are compelling reasons not to grant bail. Thus the granting of bail pending trial calls on the exercise of discretion by the court. In *Republic -v- David Nyasora Nyamongo* Criminal Case No. 90/2010, High Court Kisii U.R, Justice Makhadia (as he then was) the Judge stated:-

"At the end of the day however, whether or not an accused should be admitted to bail, is largely a matter of discretion of the court to be exercised in terms of *the Constitution*, the law applicable, taking into account the gravity of the offence, the risk of absconding, the risk of influencing witnesses, the overriding consideration of granting bail which is whether the accused will turn up for his trial once granted bail. Again the court must bear in mind the other principle purpose for granting bail which is to reinforce the cardinal principle of criminal law that an accused is presumed innocent until the contrary is proved. Therefore unless there are compelling reasons for not doing so pending such trial the accused ought to be released on bail."

I am persuaded by this holding. The burden is on the prosecution to prove to the satisfaction of the court that in the circumstances of the case the interest of justice requires the accused to be deprived of his right to liberty pending trial. The burden is on the State not on the accused as he who alleges must prove as provided under Section 107 of the *Evidence Act*.

It is the State which is required to demonstrate that there are compelling reasons. The question is; what amounts to a compelling reason. *The Constitution* does not define compelling reason.



This was considered by the Court of Appeal in the case of Michael Juma Oyamo & Another – v- Republic (2019) eKLR where the court stated-

“We wish to adopt the definition of what amounts to a compelling reason as defined by the High Court in the case of Republic –v- Joktan Malende and 3 Others. Criminal Case No. 55/2009 as follows:-

“The 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.”

The reasons for opposing bail must be convincing and cogent. The allegations raised while opposing bail must be real and not flimsy. In Republic –v- Nuseiba Mohammed Haji Osman (2018) which a persuasive decision, the trial court held that-

“Denial of a Constitutional right is not a matter to be treated lightly and therefore any claims made against an accused person aimed at curtailing. The Constitutional right to liberty must not be made on speculation or conjecture.”

2. The accused are young person one in the University and the other just finished school. The possibility of them interfering with witnesses is nil as they are likely to be relatives of the deceased. The pre-bail reports show that the community has given a positive report and are in no way opposed to the release of the accused on bond/bail. The accused are presumed innocent until proven guilty. There are no timelines for granting bail. The only reason for refusal of bail is where compelling reasons are proved. On the gravity of the offence the offence is bailable and the only reason why the court can deny bail is where compelling reasons are demonstrated.

On the ground that the grandmother is still mourning, it is my view that it is not a compelling reason. There is no end to mourning, it can go on for a long time with some people while others are able to overcome it soon enough.

To deny bail on such ground would amount to denying the accused their rights to liberty. For these reasons, I find that there are no compelling reasons to deny the accused person bail.

I order that:-

1. Each accused shall be released on a bond of Kshs.1,000,000/- plus one like surety each.
2. The sureties shall be examined by the Deputy Registrar of this court.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF APRIL, 2024.

L.W. GITARI

JUDGE

