Njoroge v Republic (Criminal Case E029 of 2023)
[2024] KEHC 3770 (KLR) (3 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3770 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL CASE E029 OF 2023

CW GITHUA, J

APRIL 3, 2024

BETWEEN

MOFFAT MUNGAI NJOROGE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant, Moffat Mungai Njoroge, faces a charge of Murder contrary to Section 203 as read with section 204 of the P*enal Code*. When he was arraigned before this court on 24th January 2024, he denied the charges and his learned counsel Mr. Mwangi, immediately made an oral application for him to be admitted to bail or bond on reasonable terms pending the hearing and determination of his case.

2. The application was opposed by the respondent, through an affidavit sworn on 16th February 2024 by the investigating officer PC Eddy Mwangi which formed the basis of submissions made orally in court by the learned Prosecution Counsel, Ms. Muriu in opposition to the application. It was deponed in the affidavit that the applicant appeared disturbed and was believed to be harbouring thoughts of self-harm; that he was a dangerous criminal with no fixed abode and was therefore a flight risk; that if released, he was likely to interfere with prospective prosecution witnesses who were his neighbours and further, his security will not be guaranteed owing to hostility towards him from members of his community who were still bitter about the heinous act done to one of their own. The respondent urged me to find that the above grounds constituted compelling reasons to warrant denial of bail to the applicant.

3. Mr. Mwangi in his response submitted that the applicant has a fixed abode at Kabati where he lived with his family and was thus not a flight risk; that he had a constitutional right to be presumed innocent until proved guilty and that no relationship had been established between him and the prosecution witnesses to form the basis for the allegation that if released, he was likely to interfere with them. He

invited me to find that the respondent had failed to establish compelling reasons to justify denial of bail and the applicant ought to be admitted to bond as prayed.

4. It is settled law that under Article 49(1) (h) of the *Constitution*, an accused or arrested person has a right to be admitted to bail or bond on reasonable terms, pending a charge or trial, unless there were compelling reasons that warranted denial of the exercise of that right.

5. It is clear from the above provision that an accused persons right to bail though constitutionally protected was not absolute but was limited by existence of compelling reasons. What then amounts to compelling reasons?

   My brief answer to this pertinent question is that there is no universal test or scientific method that has so far been devised to determine what constitutes compelling reasons and therefore, such a determination will have to be made on the facts and circumstances of each case.

6. However, the term " compelling reasons" was defined in *Republic V Joktan Mayende & 3 Others* (2012) eKLR as "...reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond....."

7. The *Judiciary Bail and Bond Policy guidelines*, 2015, and Section 123 A of the *Criminal Procedure Code* have given guidance on actors which the courts should consider when dealing with application for bail or bond which, if proved, would amount to compelling reasons warranting denial of bail to an accused person. These includes;

   a.) Whether the was likely to fail to attend court proceedings.

   b.) whether the accused was likely to commit, or abet the commission of, a serious offence; or

   c.) The nature and seriousness of the offence charged.

   d.) Whether the accused was likely to endanger the safety of victims, individuals or the public; or that he should continue being detained for his own protection;

   e.) Whether the accused was likely to interfere with witnesses or evidence;

   f.) Whether the accused was likely to endanger national security; or

   g . whether it was in the public interest to detain the accused person in custody.

8. In this case, I find that most of the reasons advanced by the prosecution in opposition to the application have not been substantiated by any evidence and were mainly based on speculation or conjecture. For instance, no material was placed before the court to support the claim that if released, the applicant was likely to interfere with prosecution witnesses. I say so because the identity of the said witnesses was not disclosed or where they resided or even their relationship with the applicant, if any.

   It was also not claimed or suggested that the applicant had prior to or after his arrest attempted to reach out to the said witnesses either directly or indirectly with the purpose of either threatening or intimidating them into not testifying or influencing their expected evidence.

9. Thirdly, the respondent did not lay any basis for its assertion that the applicant was a dangerous criminal who did not have a fixed abode. No evidence was availed to the court to prove that the applicant was a habitual offender who had been convicted of serious criminal offences in the past in order to qualify to be labelled as a dangerous criminal. Without such evidence, the description of the applicant using such derogatory terms in my view amounts to character assassination of the applicant which is untenable and must be discouraged.

Further, the prosecution's claim that the applicant was a flight risk as he did not have a fixed abode was contradicted by the contents of the pre-bail report which confirmed that the applicant had a fixed abode in Kabati Location where he was residing with his parents prior to his arrest.

10. It was also the respondent's case that the applicant should be detained in custody pending determination of his case as his safety, if released was not assured owing to hostility from members of his community as a result of the heinous act that he had committed. However, as stated in information, the incident which led to the deceased's loss of life occurred at a place known as Githanji village and the pre-bail report which was independently compiled by a probation officer clearly indicated that the accused hailed from a different location. It is therefore safe to conclude that the community that may be hostile towards the accused is the one resident in Githanji village and not Kabati where the accused is likely to return if his application is successful. And though I truly sympathise with the people of Githanji village for loosing one of their own, it must be remembered that all accused persons including the applicant herein have a constitutional right to be presumed innocent until proven guilty.

11. Lastly, the other reason fronted by the prosecution to object to the applicant's admission to bail is that the accused appeared disturbed and was believed to be harbouring thoughts of self-harm. It is not clear how the investigating officer came up with this conclusion because for starters, he did not disclose the person who made that assessment and the facts informing the belief that the accused was having suicidal thoughts.

12. A perusal of the medical report which was completed before the applicant took his plea confirms that upon examination, although the applicant's mood was found to be abnormal, he was otherwise mentally sound and that must be why he was certified fit to plead. In my view, there is no evidence to support the respondent's claim that the accused was mentally disturbed and he should for that reason continue to be detained for his own protection.

13. I must state at this juncture that denial of a constitutional right which includes the right to be released on bail pending trial is not a matter that should be taken lightly. It is a serious matter that should meet the constitutional threshold spelt out in Article 24 of the *Constitution* on limitation of rights and fundamental freedoms. In applications of this nature, if the prosecution was to succeed in having an accused persons right to liberty curtailed, it must lay before the court strong, cogent and credible reasons to convince the court that denial of bond was reasonable and justified in the circumstances of the case.

14. In this case as demonstrated above, I am not satisfied that the prosecution has proved existence of compelling reasons that would militate against release of the applicant on bail pending trial. In the premises, I find merit in the application and it is hereby allowed on the following conditions;

    i. The applicant will be released upon signing bond of Kshs. 500,000 together with one surety of the same amount.

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

    ii. Once released, the applicant shall attend the Deputy Registrar once every three months until further orders of this court and shall also attend the court on all hearing dates without fail.

    iii. Failure to comply with the above condition shall lead to cancellation of the applicant's bond.

       It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 3RD DAY OF APRIL 2024.

In the Presence of :

The accused

Ms. Muriu for the respondent

Ms. Susan Waiganjo , Court Assistant

No appearance for Mr. Mwangi for the accused.