



REPUBLIC OF KENYA



**Republic v Njuguna alias General (Criminal Case E040 of 2023)
[2024] KEHC 7532 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 7532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E040 OF 2023
DO CHEPKWONY, J
MAY 9, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JEREMIAH KAMAU NJUGUNA ALIAS GENERAL ACCUSED

RULING

1. The Accused person has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The Particulars of offence is that:-

“The Accused on the 5th day of November, 2023 at Namba Nane stage in Kihara Location in Kiambaa Sub County within Kiambu County murdered Simon Gathigi Kamau alias Omari.”

2. The Accused pleaded ‘Not Guilty’ to the offence and he filed a Notice of Motion application dated 15th December, 2023 seeking the following orders:
 - a. That the Honourable Court be pleased to release the Applicant on bond or bail on such reasonable conditions as the court may determine.
 - b. That this Honourable Court be pleased to issue such orders as may be fair and just to secure the Applicant’s constitutional right to be released on bond or bail pending conclusion of the trial.
3. The Application is based on the grounds on its face and the Supporting Affidavit of Jeremiah Kamau Njuguna alias General. The Applicant contends that the offence of murder which he is charged with is bailable under Article 49 (1) (h) of the [Constitution](#) of Kenya and that he has a qualified right to be presumed innocent until he is proven to be guilty. He holds that he shall abide by the terms of the



court and shall not interfere with the witnesses in the matter. He also states that he is not a flight risk as he has a fixed place of abode.

4. The State filed an Affidavit which was sworn by No. xxxx CPL Alexander Nyamu as the Investigating Officer in opposition to the application. It is his contention that although the accused is entitled to bail for the offence he is charged with, the same may be denied where there are compelling reasons. He states that the offence of murder is of serious nature as it attracts a very punitive punishment if is found to be guilty.
5. According to the Investigating Officer, the investigations reveal that the accused person was arrested in Mihang'o area in Kayole where he had gone into hiding after committing the offence . He further states that the accused person is also to face other charges before the Magistrate court for the second victim and that he does not have a fixed abode and therefore he is a flight risk. He further adds that the security of the accused person is also at stake as the community is still angry with his actions. He has urged the court to deny the accused person bail/bond until the matter is heard and determined.
6. The court called for a social inquiry to be conducted on the accused and a bail information report to be availed to court. The pre-bail information was filed on 30th January, 2024 wherein it is stated that the accused person is married to two wives and has children. He is said to have been working at Latema Sacco as a stage attendant. The report also states that the accused has a supportive family which is ready to host him in Nyandarua and that his brother is ready and willing to stand as surety for him and also act as contact person.

Analysis and Determination

7. To determine the application by the Applicant (accused) this Court has read through the respective pleadings filed by either party for and against the application and found the main issue being whether there are compelling reasons to deny the accused release on bail.
8. The right to bail for an accused person is guaranteed under Article 49(1)(h) of the *Constitution*.
9. However, this is not automatic if it is shown or demonstrated that there are compelling reasons to deny it. Article 49 (1)(h) provides that: -

‘An accused 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.’
10. Therefore, the main consideration in such application is if the reasons by the opposing party, in this case, prosecution are compelling enough to warrant an accused to be denied release on bail and bond terms. In the case of *Republic v Joseph Thiongo Waweru & 17 Others* [2017] eKLR, the Court defined ‘compelling reasons’ as follows: -

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”



11. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provides for various factors which ought to be considered in granting or denying an accused release on bail and bond terms. And they are 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 fulfilment 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.

12. These factors have been restated in the Judiciary *Bail and Bond Policy Guidelines*, at Paragraph 4.9 as general guidelines as follows:-

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

13. In this particular case, having considered the grounds given in support of the application by the accused person, the affidavit of the investigating officer and the pre bail report made by the Probation Officer, the Court notes that the accused person has a supportive family which is ready and willing to provide a surety for him. The court has also taken note of the sentiments of the Investigating Officer that the accused is required to face charges at the Magistrate's Court for the second victim. This, coupled with the unrebutted contention by the Investigating Officer that the accused was arrested while in a hiding in Kayole, the court finds that the accused is likely to abscond court if he is released on bail. For those reasons, the Court finds there exist compelling reasons at the moment to deny the accused release on bail and bond terms. The accused is at liberty to re-new his application if he demonstrates a change in circumstances.

14. The upshot is that the Notice of Motion dated 15th December, 2023 lacks merit and is hereby dismissed. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 9TH DAY OF MAY, 2024.

D.O CHEPKWONY
JUDGE



In the presence of:

M/S Ndeda counsel for the State

Mr. Njehu counsel for the accused

Mr. Mwathe counsel for the complainant

Court Assistant - Martin

