



**Republic v Njuguna (Criminal Case E088 of 2023)
[2024] KEHC 5086 (KLR) (Crim) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E088 OF 2023
LN MUTENDE, J
MAY 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

P.C. JOHN WAWERU NJUGUNA ACCUSED

RULING

1. P.C. John Waweru Njuguna, the accused, was arraigned in court following allegations of having committed the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence being that on the night of 11th November, 2023, at about 1030Hrs along Haile Sellasie Avenue within Kamukunji Sub-County within Nairobi County, he murdered Benedict Maingi Iseu alias Mwanzia (Deceased).
2. Based on an accused person's constitutional rights, as provided by Article 49(1) of the Constitution, the accused seeks to be released on bond pending trial, an application that is opposed by the State/ Respondent Ms. Tum, Prosecution Counsel indicated that they were to file an affidavit opposing bail that was not filed.
3. Pursuant to the requirement of the Victim Protection Act which requires views of the victim to be considered at all stages of the trial, this court sought an input of the Probation services. Following the order of the court a social inquiry was carried out by Mr. Kanyutu. Secondary Victims oppose the release of the accused on bond. It is argued that if released witnesses will be intimidated. They will change mind about appearing in court. That they would fear testifying because of perceived consequences of testifying against a police officer in court. That being a trained GSU Officer the accused is technically competent to subvert the case by instilling fear in the witnesses.



4. The community at Wakulima Market where the deceased was a trader opposed the release of the accused on bond for fear of their lives being in danger. However, the Assistant chief of Kambaa Sub-location where the accused hails from described the accused as law abiding, a person who related well with members of the local community. He vouched for his release.
5. The Investigation Officer from IPOA objected to the accused release on bail as there was a likelihood of interference with witnesses. That his release may increase security concerns.
6. It is the recommendation of the Probation Officer that following death threats uttered by the accused to the deceased companions it is not suitable for the accused to be released on bail at this stage.
7. According to Article 49(1)(h) of the Constitution, an accused has a right of being released on bond or bail but this may be limited by some circumstances. That provision of law stipulates that:

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.

8. The exception to the right to bail is enacted by Statute, the provisions of Section 123 A of the CPC that provide as follows:

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 fulfillment 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.

9. The Kenya Judiciary Bail and Bond Policy Guidelines that provides that:

- “(a) The prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

That the accused person is likely to fail to attend court proceedings; or

That the accused person is likely to commit, or abet the commission of, a serious offence; or



That the exception to the right to bail stipulated under Section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or

That the accused person is likely to endanger the safety of victims, individuals or the public; or

That the accused person is likely to interfere with witnesses or evidence; or

That the accused person is likely to endanger national security; or

That it is in the public interest to detain the accused person in custody."

10. The onus of demonstrating existence of compelling reasons lies with the one who alleges, in the instant case the prosecution. The definition of "Compelling reasons" is omitted in the Constitution but in the case of *Republic v Joktan Mayende & 4 others* [2012]eKLR, the court defined the term compelling reasons thus:

".... 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 standard set by the *Constitution*."

11. The reasons given should therefore not be based on mere allegations. These should result into the conclusion being truthful and justifiable. In that regard, compelling reasons justifying incarceration of an accused during trial should vary depending on circumstances of each case for facts of cases cannot be similar.
12. Of paramount importance when considering whether or not to grant bail is the question whether the accused will turn up for trial. A charge of murder has serious consequences in the event of conviction. This may tempt an accused to abscond, but, plausible reasons should be given as to why bail should be denied.
13. The accused is stated to have a fixed place of abode. He is not a flight risk. He is presumed innocent until proven guilty therefore he should not be deprived of liberty by being subjected to pre-trial detention. The State/ Prosecution was obligated to demonstrate the likelihood of the accused interfering with witnesses. Since it failed to file any affidavit opposing bail as indicated, this court finds no reason to deny the accused bond.
14. The upshot of the above is that the accused is granted bond of Ksh. 3,000,000/- with 2 Sureties of similar sums, with conditions attached as follows:
- That he will not interfere with witnesses directly or indirectly.
 - That he will not set foot at Wakulima Market and its environs.
 - That he will avail a letter from his area chief to confirm his presence at his place of residence.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 6TH DAY OF MAY, 2024.

L. N. MUTENDE

JUDGE



In the presence of:-

Accused/Applicant

Ms. Ogwenno for ODPP

Court Assistant – Habiba/Hadija

