



**Republic v Wanjiru alias Nyakusoga (Criminal Case E042 of 2022)
[2024] KEHC 8343 (KLR) (Crim) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E042 OF 2022
LN MUTENDE, J
JULY 4, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

HELLEN NYAGUTHIE WANJIRU ALIAS NYAKUSOGA ACCUSED

RULING

1. Hellen Nyaguthie Wanjiru alias Nyakusoga, the accused/applicant was arraigned in court following allegations of having committed murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the information indicate that she murdered Martin Karoki Wanjau on the night of 6th June, 2022.
2. Pursuant to her constitutional right as enshrined in the [Constitution](#) she seeks to be released on bond pending trial.
3. The State through No 81796 PC Erastus Muluanga has contested the application. The argument hinges on the fact of the charge being serious, the accused being a flight risk and having no fixed place of abode.
4. To this, in a further affidavit it is averred that evidential matters can only be relied on when the case is proved satisfactorily. That the accused will reside with her mother who has a permanent residential home at Tumutumumu so as to continue supporting her son who is in High School.
5. To reach an informed decision and also get views of the secondary victims the court had an input of the pre-bail report. From the report, the accused /applicant is stated to be 46 years and has 3 children. She uses alcohol and is known for substance abuse. It is said that there is a chance of relapse if she is released



- and that will abscond trial. That she lacks strong social ties and there was no commitment from her siblings to act as contact persons. But, her mother is willing to be the contact person.
6. The victim's family oppose grant of bail and indicate that the accused is a flight risk and that she is a security threat at Mathare area. The area community was of the view that the accused will be lynched in the event she comes out of prison as it almost happened and that she will interfere with witnesses who are well known to her.
 7. The DCI was of the view that the family of the deceased was still devastated that the accused would flee if she is released. To them bail is not recommended.
 8. In a repartee the accused urges that she does not have a passport and there is no evidence that she is a flight risk. That she has the right to be presumed innocent and that the court should adopt a less restrictive approach and release her on reasonable bond terms.
 9. The accused mother also filed her affidavit and stated that she is willing to offer shelter to the accused, the chief of Tumutumu location also confirmed that the accused mother has built a permanent house and that she is ready to offer shelter to her daughter.
 10. I have taken into account arguments raised. the Constitution guarantees the right to bail pending trial to every arrested person. The right may be limited where compelling reasons exist.
 11. Article 49(1)(h) of the Constitution that provides thus:
 - (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.
 12. the Constitution does not define compelling grounds, but, case law has endeavoured to settle on what is tantamount to compelling reasons which is stated to be what is forceful and convincing and the burden to prove it is upon the State/prosecution who avers.
 13. In Republic v Francis Kimathi (2017) eKLR, it was held:

“... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution ...”
 14. Granting of bail is within the discretion of the trial court and to consider whether or not to grant bail the court is required to take into account what is expressed in the Kenya Judiciary Bail and Bond Policy Guidelines that provides as follows:
 - (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:
 - a. That the accused person is likely to fail to attend court proceedings; or



- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody. “
15. The accused herein is alleged to be flight risk and that she lacks a place of abode. There is also the averment that the accused would interfere, threaten and/or intimidate witnesses since she is a dangerous person. Lastly that her security would be at risk if released.
16. Witness interference and/or influence must be demonstrated beyond mere speculation. There is no evidence of such attempt or list of witnesses who risk being threatened.
17. The threat to the accused security must also be demonstrated. The accused was arrested in the year 2022 and has been in custody since then. She has been cited as a person of bad character and a danger to the society at large. This has caused fear among the community and that there is also a possibility of retaliation. Stringent bond terms and conditions set would address feared but unsubstantiated threats. The police have a duty to investigate and prefer charges where there is breach of peace and security and these should be viewed as independent crimes from the charges before this court. The bond terms may be revoked in the event the accused commits crime related to the offence; is found to have breached peace; visits the area of crime or approaches any witness.
18. There is no tangible evidence put forth to demonstrate that the accused is a flight risk who may not turn up for trial. Through affidavit evidence the accused avers that she will reside with her mother at Tumutumu in Nyeri County particulars of the actual place are given as Land Parcel Kirimukuyu/Thui/895. This is away from the place of incidence. It resolves the contention and possibility of witness interference and also the perceived security threat.
19. From the foregoing, it has not been established that there are forceful or convincing reasons that require the accused person being denied bail. Therefore, I make orders thus:
- a. The accused is granted bond of Kenya Shillings two million (Kshs 2,000,000/-) with two (2) sureties in a similar sum.
 - b. Upon release, she will be barred from returning to Mathare area where she resided, and/or contacting witnesses who have recorded statements
 - c. In event that she disobeys conditions set, the State will be at liberty to apply for cancellation of the bond.
20. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 4TH DAY OF JULY, 2024.

L. N. MUTENDE

JUDGE

