



**Republic v Njeri (Criminal Case E009 of 2024)
[2024] KEHC 8133 (KLR) (Crim) (1 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL CASE E009 OF 2024

LN MUTENDE, J

JULY 1, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIAN MURAGE NJERI ACCUSED

RULING

1. Brian Murage Njeri, the accused, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars against him are that on the 3/5/2018 at Umoja Zone G at Buruburu, jointly with others not before court, murdered James Irungu Waithaka.
2. Having denied the charges, the accused seeks to be released on bail pending trial. The application is premised on grounds that: the accused is a young man with young family; he is not a flight risk; he has a fixed place of abode; he relies on menial jobs and undertakes to attend court if his application is successful.
3. The State through No. 88012 P.C. Moses Ambrose oppose the application on grounds that the accused and Michael Thiong'o Kinyanjui alias Kazidu allegedly attacked the deceased at Umoja. He was arrested and charged in Nairobi High Court Criminal Case No. 27 of 2018 while Michael was charged Criminal Case No 33 of 2019, cases that were later consolidated with HCRC No. 27 of 2019, being the lead file and they were released on cash bail of Ksh. 50,000/-
4. Upon being released on cash bail, the accused absconded. Efforts to trace him were futile as he had provided wrong identification details, identity card and background information which belonged to another person. That the chief of Katheri area in Laikipia County was also interviewed in an effort to trace him but it turned out that the accused was not from his area of jurisdiction. Finger print also confirmed that he was not the holder of the identification card.



5. In the interest of justice, the case against him was withdrawn. The State through the Director of Public Prosecutions applied for a *Nolle Prosequi* to be entered, an application that was allowed and the matter against his co accused has proceeded.
6. Subsequently, the Investigating Officer acting on information received arrested the accused at Kariobangi. In this regard, the State submitted that the accused is a flight risk and that he does not have a fixed place of abode.
7. I have considered rival arguments. The right to bail pending trial is a constitutional right provided under Article 49(1)(h) of the *Constitution* as read with Section 123 of the *Criminal Procedure Code*. Ordinarily, bail is denied where existence of compelling reasons have been proved and where the court in its discretion finds that bail is not appropriate.
8. Section 123A of the *Criminal Procedure Code* provides that:
 - (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;
9. The accused was arraigned following accusations of having committed a serious offence. And it is not disputed that he failed to turn up for trial having disappeared before trial commenced. His character is also in question, it is not denied that he used documents that did not belong to him, this was not only deceitful, but a criminal act.
10. The accused failed to comply with bail terms and fled. It was impossible to trace him for a period of four (4) years which was a deliberate insult to justice.
11. It is apparent that the State has put up a compelling argument requiring the accused being denied bail. In the result the application for bail be and is hereby dismissed. The accused will remain in custody until hearing and determination of his case.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY

THROUGH MICROSOFT TEAMS AT NAIROBI,

THIS 1ST DAY OF JULY, 2024.

L. N. MUTENDE

JUDGE

