



**Republic v Nguta & 3 others (Criminal Case E046 of 2023)
[2024] KEHC 10091 (KLR) (Crim) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10091 (KLR)

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

CRIMINAL

CRIMINAL CASE E046 OF 2023

LN MUTENDE, J

AUGUST 6, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL MAINA NGUTA ALIAS SPARTA 1ST ACCUSED

JOSEPH KARANJA THUO ALIAS KARASH 2ND ACCUSED

JOEL NGOCHI NJUGUNA ALIAS DAKTARI 3RD ACCUSED

ELIUD KAIGE MWANGI 4TH ACCUSED

RULING

1. Michael Maina Nguta alias Sparta (Accused 1); Joseph Karanja Thuo alias Karash (Accused 2); Joel Ngoch Njuguna alias Daktari (Accused 3); and, Eliud Kaige Mwangi (Accused 4) are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars being that jointly with others not before court they murdered Dan Munyundo alias Mato alias Uncle.
2. Having denied the charges they seek to be released on bond pending trial; an application that is opposed by the State. Through No. 52427 Corporal Abdi Ali, the Investigating Officer in the matter, it is averred that the accused are flight risk who will evade the jurisdiction of the court; they have no place of abode, and, if released on bond there is a chance of absconding the jurisdiction of the court.
3. That the accused can subvert justice as the 1st and 2nd accused presented themselves to the Police Station purporting to be unaware of the incident. That the genesis of the matter was a pistol the accused were demanding from the deceased, a pistol that is suspected to be in the accused accomplice possession. That the individuals to testify, some of them known robbers are well known to the accused hence there is a high chance of them interfering, intimidating and threatening the witnesses if released on bond.



4. And, the seriousness of the charge and irrefutable evidence against the accused will entice the accused to abscond.
5. The 1st, 2nd and 3rd accused dismissed the allegations set out in the affidavit in opposition to bond calling it hearsay. That the 1st, 2nd and 3rd accused cannot be flight risk as they willfully presented themselves to the Police Station to aid in Investigations. That there was no evidence to support the contention that the accused will interfere with witnesses. That the accused must be presumed innocent. Their liberty should be considered and the public interest as well. Reliance was placed on the case of *Republic Vs. Sifuna* Crim. Case No. E017 of 2023 (2023) KEHC 22379 (KLR) where the court stated:

“Given the amorphous nature of the term ‘compelling reasons’ or ‘exceptional circumstances,’ a court while exercising its discretion in dealing with bail and bond application must ‘consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify his release’ and must also balance “between the liberty interests of the accused and the interest of which”, society in denying the accused bail, will be resolved in favour of the denial of bail unless “exceptional circumstances” are shown”. In Kenya those ‘compelling reasons’ or exceptional circumstances must be demonstrated by the prosecution.”

6. The 4th accused denied being flight risk as he has a fixed place of abode. He urged that he has a fixed place of abode in Umoja, Nairobi and hails from Gilgil, Nakuru County. That he has no passport and if incarcerated his young family will suffer. He promised not to interfere with witnesses and called upon the court to consider the findings of the Probation Officer.

7. I have considered rival averments put forth. Article 49(1)(h) of *the Constitution* provides that:

(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.

8. An accused person should not be deprived of his liberty by being subjected to pre-trial detention. The right to freedom is enshrined in Article 24 of *the Constitution*. The right to liberty can only be limited if provided by law. It is for this reason that bail can only be denied if there are compelling reasons. Such reasons are not defined by *the Constitution* but caselaw has defined what would amount to compelling reasons.

9. In *Republic Vs. Joktan Mayende & 4 others* (2012) eKLR the court stated 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*.”

10. The Bail and Bond Policy guidelines at Paragraph 4.26 provide what amounts to compelling reasons thus:

“.....(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. ”
11. Of most importance is whether an accused will turn up for trial. Therefore, to be denied bail, reasons put forward must not be flimsy, they must be substantial. The argument raised must be clear and convincing.
 12. It is argued that the accused are flight risk as they are likely to leave the jurisdiction of the court. This would undermine the criminal justice system as the matter would not be determined as provided by the criminal system of rules.
 13. It is argued and not denied that the 1st and 2nd accused presented themselves to the police some five (5) days later, after the incident purportedly to clear their names but following evidence captured on CCTV footage they were detained. Regrouping with other accomplices is hence possible.
 14. The Pre-bail report indicates that the 1st accused works with uneliver-Kenya in the packaging department. He uses cannabis sativa (bhang). Although he denies being part of the gang, witness statements, though not tested at this stage, allude to the fact of the accused being part of the gang. The statements have been supplied hence the allegations are within the Knowledge of the accused. These are witnesses the accused is likely to interfere with.
 15. I do note that the Probation Officer recommended for his release on bond on appropriate terms and conditions. But, the recommendation is not binding on the court.
 16. With regard to the 2nd Accused, social inquires conducted revealed that he is part of the gang known to keep pistols hence would intimidate witnesses.
 17. For Accused 3, social inquiry carried out revealed that he is part of the gang including others who are still at large who are in possession of the impugned pistol which may be used to intimidate witnesses.
 18. Accused 4 is also stated to be part of the gang who posses a pistol. This can be used to frighten the witnesses.
 19. For the safety of witnesses and victims; and, further preservation of evidence to be tendered, it will not be advisable to release the accused on bond. For that reason, I find the State having put forth cogent reasons requiring the accused incarceration during pendency of the case.
 20. Therefore, the application for bail in respect of all the four (4) accused is declined.
 21. It is so ordered.



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

L. N. MUTENDE

JUDGE

