



**Njogu & another v Republic (Criminal Case E022 of 2024)  
[2024] KEHC 12921 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12921 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E022 OF 2024  
CW GITHUA, J  
OCTOBER 23, 2024**

**BETWEEN**

**JOHN KIMANI NJOGU ..... 1<sup>ST</sup> APPLICANT**

**CHARLES GITUNGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. John Kimani Njogu and Charles Gitunga are brothers. They are jointly charged with their mother, Salome Waruguru Njogu with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. They were arraigned in court on different dates and each one of them pleaded not guilty to the charges.
2. The court record shows that the reason they were presented to court on different dates is because the 3<sup>rd</sup> Accused was unwell and was admitted for treatment at Tumu Tumu Hospital when the 1<sup>st</sup> and 2<sup>nd</sup> accused took their plea on 18<sup>th</sup> September 2024. Accused 3 was presented to court on 2<sup>nd</sup> October 2024 and since the prosecution did not oppose her application for bond, she was admitted to bond pending trial on the same day.
3. This ruling therefore is in respect of the application for bond pending trial made on 18<sup>th</sup> September 2024 by learned counsel Mr. Ndegwa on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Accused.
4. The application was opposed by the respondent through an affidavit sworn on 21<sup>st</sup> August 2024 by the Investigating Officer, CPL James Kimani . In paragraph 9 of the affidavit, CPL Kimani explained why the prosecution was opposed to admission of the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons (the applicants) to bond pending trial. The reasons given were that if released, the applicants were likely to interfere with prospective prosecution witnesses; that the 1<sup>st</sup> accused was a flight risk as he escaped to Bungoma after



- the offence was committed; and, that their safety would not be guaranteed as the community they will be released to was still bitter with them and was likely to harm them.
5. The application was argued orally before me on 7<sup>th</sup> October 2024. I have carefully considered the submissions made by both Learned counsel Mr. Ndegwa and learned prosecuting Counsel Ms. Muriu in support and in opposition to the application.
  6. It is trite that under Article 49 (1) (h) of the Constitution of Kenya 2010, an accused or arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there were compelling reasons not to be released.
  7. It is now settled law that the duty to demonstrate existence of compelling reasons that would warrant curtailment of an accused person's constitutional right to liberty pending trial rests squarely on the shoulders of the prosecution.
  8. That said, there is no standard measure or scientific method of determining what constitutes compelling reasons in any given case and since no two cases have exactly similar facts, such a determination will have to be made on the facts and circumstances of each case.
  9. The Criminal Procedure Code at Section 123 A (2) and the Judiciary Bail and Bond Policy Guidelines, 2015 have set out factors which the court ought to consider in exercising its discretion in applications such as the one before this court and which if proved, may amount to compelling reasons to justify denial of bond to an accused person. These includes: whether the accused was likely to abscond and fail to attend his trial ; whether the accused was likely to subvert the cause of justice by interfering with investigations or prosecution witnesses; whether if released, the accused was likely to endanger the lives of victims or whether the accused should continue to be detained for his or her own protection or in the public interest.
  10. In this case, one of the reasons advanced by the prosecution in opposing the application is that the 1<sup>st</sup> accused was a flight risk as he had disappeared to Bungoma after the offence was committed and that if released, the applicants lives may be in jeopardy as members of the community in which they live were still bitter with them and may cause them harm. These two claims are however not substantiated by any evidence. There is no evidence, for example, that the reason there was delay in the arrest and prosecution of the accused persons was because the 1<sup>st</sup> accused had gone underground after the offence was committed. In addition, the prosecution has not claimed that the accused persons do not have a fixed abode.
  11. Contrary to the prosecution 's claim that if released, the accused persons' lives may be in danger as members of their community were hostile and may turn against them, the pre- bail reports filed on 4<sup>th</sup> October, 2024 indicates that the above claim is not supported by the situation on the ground. They instead reveal that members of the accused persons community save for the victim's family had no objection to their release on bond and living amongst them pending conclusion of their trial.
  12. I am fully aware that the Victims Protection Act 2014 requires that views of the victims family be considered at this stage. I empathise with the victim's family because understandably, they may still be bitter for loss of their loved one but the law is that accused persons are just suspects and they have a constitutional right to be presumed innocent until proved guilty.
  13. The prosecution had also alleged that if released, the Applicants were likely to interfere with prosecution witnesses. What constitutes interference with witnesses was discussed by Gikonyo, J in the



persuasive authority of *Republic v Joktan Manyende & others* (2012) eKLR when he expressed himself as follows;

“All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”

14. I wholly agree with the above exposition of what constitutes witness interference and wish to add that, for the prosecution to establish a claim that an accused if released was likely to interfere with witnesses, it must place before the court credible and tangible evidence demonstrating actual or perceived interference. It must show the court, for instance, evidence of direct or indirect incriminating communication between the accused and the witnesses ; the relationship between the accused and the witnesses or existence of threats or other forms of intimidation made to prosecution witnesses. No such evidence has been placed before this court. The prosecution’s claim therefore remains unsubstantiated and is at best speculative.
15. For all the foregoing reasons, I have come to the firm conclusion that in this case, the prosecution has failed to discharge its burden of demonstrating existence of compelling reasons to mitigate admission of both applicants to bond pending trial. Consequently, I find merit in the application and it is hereby allowed on the following terms;
  - i. Each Applicant will be released upon executing a personal bond of Kshs 500,000 together with one surety of like amount. The surety will be approved by the Hon. DR of this court.
  - ii. Once released, the applicants will not contact any of the prosecution witnesses whether directly or indirectly.
  - iii. The applicants will attend this court on all hearing dates or whenever required.
  - iv. Failure to comply with conditions ii) and iii) above will lead to cancellation of their bond.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG’A THIS 23<sup>RD</sup> DAY OF OCTOBER 2024.**

**C.W. GITHUA**

**JUDGE**

In the presence of :

Both applicants

Mr. Ndegwa for the applicants

Ms. Muriu for the respondent

Ms. Susan Waiganjo, Court Assistant

