



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Njoroge v Republic (Criminal Case E032 of 2022)  
[2023] KEHC 582 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 582 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E032 OF 2022  
RB NGETICH, J  
FEBRUARY 2, 2023**

**BETWEEN**

**SAMUEL NDUNG’U NJOROGE ..... ACCUSED**

**AND**

**REPUBLIC ..... PROSECUTOR**

**RULING**

**Ruling on bond application**

1. The accused herein Samuel Ndung’u Njoroge was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars are that on 18<sup>th</sup> day of August 2022 at Kiriko Village, Nembu location in Gatundu South Sub-County within Kiambu County, accused murdered John Murunyu Njuguna.
2. The charge and its full particulars were read over and explained to the accused on 3<sup>rd</sup> October 2022. He pleaded not guilty and a plea of not guilty was entered.
3. Through his defence counsel Ms. Sinana, the accused filed an application dated 13<sup>th</sup> January 2023 seeking to be released on reasonable bail terms pending the hearing and determination of this case.
4. The application is supported by the annexed affidavit sworn by the accused on even date. He deposes that he has been in custody since 18<sup>th</sup> August 2022 when he voluntarily availed himself to the police post and he is willing to abide by the conditions set for granting bail. He undertakes not to interfere with the witnesses.
5. The state counsel Ms. Ngesa informed the court that the state is not opposed to the accused being released on bail/bond. The court called for a pre-bail report which was filed on 6<sup>th</sup> December 2022.



6. In the pre-bail report, the community describes the accused as a hardworking person with no negative report to the authorities. They are not opposed to the accused being released on bond. The accused's father is willing to stand as surety for the accused.
7. The granting of bail is a constitutional right which ought to be denied only when the prosecution adduces compelling reasons to deny accused bond. In the case *Republic v Mumush Hirbo Faja* [2014] eKLR the court stated thus: -

“ Article 49(1)(h) provide that accused person is entitled to be released on bond /bail unless the prosecution has compelling reasons to the contrary. The right to bail is therefore not absolute and it is at the discretion of the court.

The right to bail does not depend on whether or not the prosecution has strong evidence against the accused. The relevant constitutional provision does not classify offences that areailable or not – Bail is open to all offences including capital offences. The basis of this right has a bearing on the presumption of innocence until proven guilty as provided for by Article 50(2)(a). The seriousness of the offence and the strength of the evidence is therefore, not a basis of denying the accused bail.”

8. The victim's family oppose the accused being released on bond stating that there is likelihood of interfering with the witnesses.
9. In view of the fact that prosecution have not advanced compelling reasons to warrant denying accused bond/bail. I find the application dated 13<sup>th</sup> January 2023 is merited.

#### **10. Final orders**

The accused shall be released on a bond of Kshs 500,000/= with a surety of a similar amount.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU**

**THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2023**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Martin – Court Assistant

Accused – Present

Ms. Ngesa for State

No appearance for Accused

