



REPUBLIC OF KENYA



**Republic v Njoka & 5 others (Criminal Case E010 of 2023)  
[2023] KEHC 20815 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20815 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL CASE E010 OF 2023**

**LW GITARI, J**

**JULY 5, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN GITARI NJOKA ..... 1<sup>ST</sup> ACCUSED**

**JEDIEL KINYANJUI KIURA ..... 2<sup>ND</sup> ACCUSED**

**WILFRED KIRIMI NKARI ..... 3<sup>RD</sup> ACCUSED**

**GAMESON MUSYOKA NKARI ..... 4<sup>TH</sup> ACCUSED**

**LOYD NYAGA NKARI ..... 5<sup>TH</sup> ACCUSED**

**NEWTON MUTWIRI ..... 6<sup>TH</sup> ACCUSED**

**RULING**

1. The accused persons herein have been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) (Chapter 63 of the Law of Kenya). The particulars of the offence are that on March 18, 2023 at around 2200H, the accused persons, jointly with another not before the court, murdered one Daniel Mutembei Ngai along Rubate road at Rubate Village, Igamba Ngombe Sub-County within Tharaka Nithi County.
2. All the accused persons denied the charge subsequently to which an application was made for the accused persons to be released on reasonable terms.
3. In support of the bail application, it was submitted that all the accused persons are gainfully employed and have a duty to report to work. That they will not be able to report to work while in custody. Further, that they are not a flight risk and have been charged for the first time. It was further submitted that



the accused person came to court on their volition and surrendered to the investigating officer. Finally, that they are good citizens who will attend court.

4. The application for bail was opposed by counsel for the state. It was submitted that four of the accused persons had been granted anticipatory bail and that they were a flight risk. That the investigating officer started investigations immediately after the offence was committed on March 18, 2023 but all his efforts to trace the suspects at their home or through their phones were futile. That the application for anticipatory insinuates that the accused persons were all the while aware of what was happening and were on the run. It was thus the submission by the state that the accused person cannot be trusted as persons who can attend court.
5. In addition, it was submitted that the accused persons are in danger as the situation on the ground is still extremely hostile. That the demonstration that took place in Chuka Town over the Easter holidays in relation were to this case and are proof that the members of the public are ready to take the law in to their own hands. Counsel for the state thus submitted that the foregoing reasons were compelling to deny the accused persons bail pending the hearing and determination of the murder case.
6. Mr Kirimi, counsel for the victims family, also opposed the application for bail. He submitted that since the material day, the accused persons went on a run and were threatening and intimidating the victims and prospective witnesses. That as a result, the witnesses went underground and failed to record their statements. Further, that the safety of the accused persons is not guaranteed and that as such, it is in the interest if justice and public order of the accused persons to be denied bail.
7. In a rejoinder, counsel for the accused persons submitted that since the accused persons were granted anticipatory bail, circumstances have changed. That before the anticipatory bail was issued, the police were transversing their homes without making any arrest. That it is the failure by the police to make an arrest that led to the public fury. It was further submitted that since the offence took place, the accused persons are still in good health and go to work within Chuka town, their families still live in the same homes and the their children go to the same schools. They therefore denied that their lives were in danger. Further, they denied that they were on the run and further denied that they were summoned but failed to go and record their statements. Ms Musili thus submitted that the right to bail cannot be taken away from the accused persons as they are presumed innocent until proven guilty. That the allegation that the accused persons are intimidating witnesses has not been substantiated by evidence. Finally, that should the accused persons fail to attend court, then this Court has the jurisdiction to cancel their bail.

## **Analysis**

8. Bail is a constitutional right. Article 49(1)(h) of the *Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested person has the right ... to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”
9. Moreover, by dint of Article 50(2) of the *Constitution*, every accused person is entitled to the presumption of innocence. Hence, in the Bail and Bond Policy Guidelines, it is recommended that:

“The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should



be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.”

10. Paragraph 4.9 of the Bail and Bond Policy Guidelines provides that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

11. In the present case, it was deponed by Police Constable Stephen Waweru that the accused persons who are key suspects in this trial declined to report to the DCIO and record their statements for purposes of investigations. Further, that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> accused persons filed a Miscellaneous Application No E007 of 2023 at the Chuka High Court seeking anticipatory bail alleging that the police were looking for them to make arrests. Police Constable Stephen Waweru went on to deny the said allegation and contended that the despite being granted bail of Kshs 100,000/= the said accused persons failed to report to the Investigating Officer and that it took the intervention of the Defence Counsel for the applicants to report to the DCIO. PC Stephen thus contends that there is fear that the applicants may not attend court on their own volition if they are granted bail.

Section 123 A(1) of the [Criminal Procedure Code](#) which is to be read with Section 123 provides:-

- “(1) Subject to Article 49(1) (h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular-
- (a) the nature or seriousness of the offence;
  - (b) the character, antecedents, associations and community ties.
  - (c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and(d) the strength of the evidence of his having committed the offence.”

calls on the court to consider all the relevant circumstances and in particular,- the nature and seriousness of the offence, character and antecedents, association and community ties, the offenders past record and the strength of evidence. Other considerations are whether the accused has been granted bail previously and failed to surrender to the court or custody and that he should be kept in custody for his own safety. Each case must be handled on its own safety. Each case must be handled on its own circumstances. In the case of [Republic -v- Lucy Njeri Waweru & 3 Others](#) High Court Milimani these factors were discussed.

The court is called upon to weight an accused person’s right to bail against the objections by the State.

In this case the compelling reasons outweigh the right of accused to be released. The State has demonstrated that there is a real threat to the safety of the accused if released on bail. The court has a duty to protect the accused and ensure their safety, to preserve them so that they can attend trial and due process be followed.”

12. In addition, the family of the deceased staged a major demonstration on April 9, 2023 at Chuka Town which brought the town to a standstill. Following the said demonstrations, it is feared that the lives of the suspects are in danger and granting them bail pending the hearing and finalization of the murder case may lead to more deaths. Given the reasons given by PC Stephen Waweru, it is my view that the



same are compelling enough to deny all the suspects bail. As such, I opine that the application for bail lacks merit.

I order that the application be dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 5TH DAY OF JULY 2023.**

**L.W. GITARI**

**JUDGE**

**5/7/2023**

**Ms Musili holding brief for Mr. Towett for Accused**

**Mr. Kirimi W/B for the family of the victim.**

**The ruling has been read out in open court.**

**L.W. GITARI**

**JUDGE**

**5/7/2023**

