



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Republic (Criminal Revision E380 of 2023)
[2023] KEHC 21554 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E380 OF 2023
PM MULWA, J
AUGUST 3, 2023**

BETWEEN

FESTUS MWANGI NGUGI APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original order in Kiambu Chief Magistrate's Court Criminal
Case No. E753 of 2023 delivered on 25th May 2023 by Hon. M. A. Opondo)*

RULING

1. The issue before the court for determination is whether the accused person herein Festus Mwangi Ngugi should be released on bond/bail pending trial.
2. The accused was charged with the offence of Trafficking in Narcotic Drugs contrary to section 4 (a) of the *Narcotic Drugs and Psychotropic Substance Control Act* No 4 (a) of 2018. The particulars are that on April 16, 2023 at Kanunga village Kiambu East Sub-County the accused was found in possession of narcotic drugs to wit 8 rolls and 791 grams with a street value of Kshs 2,500/= which were not in medicinal preparation form.
3. On April 17, 2023, he was arraigned in court and pleaded not guilty to the charge. The prosecution opposed to his release on bond/ bail on the basis that the applicant was facing similar charges in Kiambu Criminal Case No E5990 of 2022, where he was released on a bond of Kshs 500,000/=.
4. In her ruling the learned trial magistrate held that;

“...The prosecution has demonstrated compelling reasons that incline this court's position to deny the accused person bail and bond. This court therefore makes the finding that the



accused person shall be placed in custody till the conclusion of this case and his case will be heard on a monthly basis unless otherwise ordered.”

5. It is this decision that provoked the current revision application dated June 9, 2023.
6. This court has been called upon to exercise its supervisory jurisdiction as per Section 362 of the [Criminal Procedure Code](#) which provides as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
7. The trial magistrate declined to grant the applicant bail/bond on the basis that he had committed a repeat offence when out of bail. The primary consideration by the court in deciding whether to or not grant bail/bond is the accused attendance in court.
8. The applicant contends that Kiambu Criminal Case No E5990 of 2022 is ongoing and he has not absconded trial.
9. The prosecution on the other hand is not opposed to the applicant’s release on bond but calls for the court to give stringent bond terms.
10. The court called for a pre-bail report which was filed on July 10, 2023. In the report, the applicant is aware of the gravity of the offence and pleads for lenient bail terms. The report leaves it open to the court to make its determination.
11. Article 49(1)(h) of the [Constitution](#) provides that:

An accused 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.
12. Section 123A of the [Criminal Procedure Code](#) gives the parameters for the grant of the right to bail as follows:
 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 of the accused person;
 - c. the defendant’s record in respect of the fulfilment of obligations under previous grants of bail; and;
 - d. the strength of the evidence of his having committed the offence;
 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;



b. should be kept in custody for his own protection.

13. The prosecution ought to present compelling reasons to deny the accused bail. In the instant case, the state is not opposed to the applicant being released on bond/bail. As was held in *Republic vs. William Mwangi Wa Mwangi* [2014] eKLR:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the constitutional right to bail...It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”

14. In the instant case the applicant has a right to be presumed innocent until proven guilty as per Article 50 of the *Constitution*. The mere fact that a person who is out on bond is charged with a commission of an offence which he denies cannot amount to a commission of an offence while out on bond. That cannot be a basis to deny the accused bail pending trial. To deny the accused bail/bond would require the prosecution to prove that a conviction has ensued.

15. Consequently, this court allows the application dated June 9, 2023 and revises the decision of the learned trial magistrate dated May 25, 2023 in Kiambu Criminal Case No E753 of 2023.

16. The applicant is admitted to a bond of Kshs 500,000/= with a surety of a similar amount or an alternative cash bail of Kshs 250,000/=. The orders to be processed in the trial court.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU

THIS 3RD DAY OF AUGUST 2023.

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P.M. MULWA

JUDGE

In the Presence of:

Duale – court assistant

Mr. Gacharia h/b for Mr. Muriuki - for the State/Respondent

Ms. Kimathi - for the Applicant

Applicant - present

