



**Republic v Ng’ang’a (Criminal Case E006 of 2024)  
[2024] KEHC 13845 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13845 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE E006 OF 2024  
RB NGETICH, J  
NOVEMBER 7, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN KIBUGI NG’ANG’A ..... ACCUSED**

**RULING**

1. The accused person John Kibugi Ng’ang’a has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused person on the 24<sup>th</sup> day of July,2024 at Shauri Yako estate, Eldama Ravine Location in Koibatek Sub-County within Baringo County murdered Joseph Ng’ang’a Ng’a ng’a.
2. On the 16<sup>th</sup> September,2024, the charge and its full particulars was read over to the accused person who denied the charge and a plea of not guilty was entered. The court directed that Pre-Trial of the matter be on the 14<sup>th</sup> October,2014 and that the Pre-bail Report to be filed.

**Pre-bail Report**

3. From the report, the accused sat for KCPE and scored 296/500 marks but did not proceed with Secondary Education due to financial challenges in the family. Once out of school, he engaged himself in casual jobs where he working as a cobbler prior to his arrest. He is not married and was living within the plot of his late grandmother before the incident.
4. The inquiry conducted on the accused person, his family members and local administration did not associate him with drug and substance abuse. The accused has no records of past admission to bond terms.



5. The victim was a brother to the accused person. The parents of the accused person stated that they had decided to forgive their son for the offence that he committed. They went on to state that the two siblings were relating well before the unfortunate incident.
6. The community members as well as the area administration shared that the accused person was in good relations with other members of the community. They went on to state that he was a person who was going about his daily casual jobs as well as working as a cobbler. He was described as a peaceful person where the community members expressed shock on learning that he had killed his brother. They shared that this was the first time that they had learnt of him being in conflict with the law.
7. Upon deliberations, the family members agreed to bail the accused person out by use of a log book. His brother James Gichuki Ng'ang'a committed himself to use the logbook of his motor vehicle as security. The motor vehicle is worth approximately Kshs.500,000/=.

### **Determination**

8. Bail is a constitutional right of every citizen. 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. 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. Accordingly, Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, stipulates that:
  - (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.



11. And, in the *Bail and Bond Policy Guidelines*, it is restated as a general guideline in Paragraph 4.9 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 Kenya* 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

12. The *Guidelines* then offer the following non-exhaustive factors for consideration in bail applications:

- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- (b) The strength of the prosecution case.
- (c) The character and antecedents of the accused person.
- (d) The failure of the accused person to observe bail or bond terms.
- (e) The likelihood of interfering with witnesses.
- (f) The need to protect the victim or victims of the crime.
- (g) The relationship between the accused person and the potential witnesses.
- (h) The best interest of child offenders.
- (i) The accused person is a flight risk.
- (j) Whether the accused person is gainfully employed.
- (k) Public order, peace and security.
- (l) Protection of the accused persons.

13. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.

14. From the views of the family of the victim who are the relatives of the accused, they are willing to bail out the accused person using the log book of the accused’s brother, they indicate that they have since forgiven the accused for killing his brother. The local administration as well as the community did not the accused being released on bond stating they did not describe the accused negatively.

**Final Orders: -**

15. Accused may be released on bond of Kshs 500,000 with one surety of a similar amount.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:-



Karanja – Court Assistant.

Ms. Omari for State.

Ms. Kusolo for accused.

