



**Republic v Wangari alias Kaparo (Criminal Case E012 of 2024)
[2024] KEHC 13975 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E012 OF 2024
DO CHEPKWONY, J
NOVEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MARTIN NJENGA WANGARI ALIAS KAPARO ACCUSED

RULING

1. The Accused person Martin Njenga Wangari Alias Kaparo is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of offence are that:

“On the 31st day of March, 2024 at Kawaida sublocation in Kiambaa Sub County within Kiambu County, the accused murdered one Joseph Gitemenge Wambugu”.

2. On 17th April, 2024, the accused was arraigned whereby the court remanded him in custody and ordered that he taken for mental assessment and for the Deputy Registrar to assign him legal representation.
3. The Accused person pleaded not guilty to the offence of murder on 4th June, 2024. Ms Kimathi, he accused person’s Counsel then urged the court to grant him release on reasonable and favourable bond/ bail terms. Ms Ndeda, Counsel for the State opposed the application and urged the court to call for a pre bail report to be presented to the court to assist in the determination of the application for bail and bond terms which the Accused’s Counsel did not object. The Pre Bail Report was prepared and filed on 20th August, 2024.
4. To determine the oral application for the release of the accused on bond/bail, I have read through the pre-bail information report dated 19th August, 2024 wherein the Probation Officer inquired into the accused family circumstances, his personal circumstances, means and use of drugs and substances,



previous adherence to bond/license terms, seriousness of the offence, victim's concerns and sentiments, community ties and views of the investigating officer, bail sureties and securities in coming up with its conclusion and recommendations.

5. The Probation officer has indicated that the Accused person is a 29 year old person who is single with no dependants. It is also reported that he has a fixed abode in Kawaida village in Kiambu County and thus he is not a flight risk. The Accused is said to understand the seriousness of the offence he is facing and prays for lenient bail/bond terms which he promises to adhere to. It is further reported that he has strong family ties and his family members are ready and willing to secure his release through his uncle who is willing to stand as his surety. It is stated that the victim's family have expressed that they are still suffering from trauma due to loss of their loved one, hence are opposed to the consideration of the accused being released on bail/bond citing witness interference and re-victimization.
6. The recommendation by the Probation Officer is that the accused can benefit from bail/bond but the court should consider the concerns of the victims. By setting out terms that address the concerns that have been issued by the prosecution and victim's family.

Analysis and Determination

7. It is trite that the right to Bail and bond is provided under Article 49(1)(h) of the [Constitution](#) it which 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.”

8. In granting an accused release on bond, the court is required to consider if the reasons tendered by the prosecution and victim's family are compelling enough to warrant the denial of bail and bond terms. The Court in the case of [Republic v Joseph Thiongo Waweru & 17 Others](#) [2017] eKLR defined compelling reasons as follows:-

“The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence on the question is clear as to the kind of evidence needed to establish the “compelling reasons”: The evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient.”

9. The court is also required to consider whether or not to grant an accused release on bond/bail as provided for under Section 123A of the [Criminal Procedure Code](#), Chapter 75 of the Laws of Kenya, and they include:-

- (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.
10. In this case, the court having considered the oral application made by the Accused person's counsel and the Pre Bail Information Report filed on 20th August, 2024, the court finds that the recommendations on the accused are favourable in that it has been demonstrated that he has a supportive family who are willing to support him and there is no evidence or information to court that the accused will abscond or interfere with the witnesses. It has also been shown that the community's sentiments are favourable to the Accused.
11. In the circumstances, the court proceeds to grant the Accused person Martin Njenga Wangari alias Kaparo application on the following terms:-
- a. The accused may be released on a bond of Kshs. 500,000/= with one surety of a similar amount, and in the alternative,
 - b. The accused may be released on a cash bail of Kshs. 300,000/=.
 - c. The accused to provide particulars of his place of abode alongside those of his contact person.
 - d. The accused to attend court as and whenever he is required until the case is determined.
 - e. Failure to comply with condition (d) will render the bond/bail terms cancelled and accused to be re-arrested and remanded in custody for the remainder period of his trial until the same is determined.
 - f. Hearing on 19th and 20th February, 2025.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Ndeda counsel for State

M/S Kimathi counsel for Accused

Court Assistant - Martin

