



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION- MILIMANI COURT
CRIMINAL CASE NO. E074 OF 2024

**REPUBLIC.....APPLICAN
T
JAMES MUTHEMBA NJUGUNA
RESPONDENT**

RULING ON BAIL/BOND

INFORMATION

1. The Accused Person **James Muthemba Njuguna**, is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code **Cap.63 Laws of Kenya**.

Particulars of the offence being that on the 29th October 2024 Matikari Area, Ruai Subj County,

within Nairobi County with others not before court murdered **David Njuguna Karongo**

2. On 31/7/2025 the information and every element of the charge was read over and explained to the accused person in Kiswahili a language he understood and he responds not true.

A plea of not guilty was entered.

The Accused person applied for bail on the following grounds :-

APPLICANT'S SUBMISSIONS

3. The Accused Person has been in custody since November 2024 and he would like to be released on reasonable bond terms. Bond is matter of right of the Accused Person and the same is meant to secure the attendance of the accused person in Court.
4. The Accused Person is also willing to abide with terms and conditions of bond set by this Court and there is no prejudice that will be occasioned against the Respondent if the sought orders are issued.

5. The bail report indicates that the accused person is a family man despite having separated with his family, he has known place of abode contrary to the allegations by the prosecution that he was living on the streets and further the perusal the prosecution witness statement he was alternately living together with the deceased person prior to his demise at his place of work.
6. According to the Corporal Henry Kimutai and the accused person he was arrested when he visited the deceased and/or the victim's family after the said death and he is therefore not a flight risk.
7. **Article 49 (1) (h) of the Kenyan Constitution** provides that, an arrested person has 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.
8. In the case of **Republic v Oonde & another (Criminal Case E918 of 2024) 120251 KEHC 4837 (KLR) (25 July 2025) (Ruling)** the learned judge in arriving at his decision held that,

“7. It follows that the right to bail is not absolute and where there are compelling reasons. that right may be restricted. Nevertheless, since the Constitution

expressly confers the said right, it is upon the prosecution to show that there exists compelling reasons to deny an accused person bail.”

The considerations in determining whether or not to grant bail are set out in Bail & Bond guidelines 2015 pg 25 which set out judicial policy on bail thus;

The Prosecution shall satisfy the court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The prosecution must therefore state the reasons that in its view should persuade the Court to deny the Accused person bail and consider the following;

.....

- a. That the accused person is likely to fail to attend court proceedings; or**
- b. That the accused person is likely to commit, or abet the commission of, serious offence; or**
- c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or**
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or**

- e. That the accused person is likely to interfere with witnesses or evidence; or***
- f. That the accused person is likely to endanger national security; or***
- g. That it is in the public interest to detain the accused person in custody."***

9. In **Republic vs Fredrick Ole Leliman & 4 Others [2016] KLR** the court held that:

"The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of Ng'ang'a vs Republic 1985 KLR 451 where Chesoni J, as he then was thus: "The court in exercising its discretion to grant bail to an accused person under Section 123(1) or (3) of the Criminal Procedure Code (Cap 711 should grant bail to an accused person unless it is shown by the prosecution that there are substantial grounds for believing that:

- a. The accused will fail to turn up at his trial or to surrender to custody***
- b. The accused may commit further offences,***
or
- c. He or she will obstruct the course of justice***

10. The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider.

a) ***The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty:***

b. ***The strength of the prosecution case:***

c. ***The character and antecedents of the accused:***

d. ***The likelihood of the accused interfering with***

prosecution witnesses. The issue that arises is whether the reasons adduced by the prosecution are compelling enough such that the court should not grant bail pending trial.

11. The prosecution has not been able to satisfy any of the grounds set hereinafter for denying the accused person bail.

PROSECUTION'S SUBMISSIONS

GROUND OF OPPOSITION

The accused person has been charged with the serious offence of murder which carries a heavy penalty if convicted. The gravity of such a charge provides a

significant incentive for the accused to flee the jurisdiction of the court to avoid the long custodial sentence. This is reiterated in **Republic v Danson Mgunya & Another [2010] eKLR** the court held that;

"As a matter of fact, all other criteria are parasitic on the omnibus criterion on availability of the accused to stand trial. Arising directly from the omnibus criterion is the criterion of the nature and gravity of the offence. It is believed that the more serious the offence, the great incentive to jump bail although this is not invariably true. For instance, an accused person charged with capital offence is likely to flee from the jurisdiction of the court than one charged with a misdemeanour, like affray. The distinction between capital or non-capital offence is one way crystallized from the realization that the atrocity of the offence is directly proportional to the probability of the accused absconding. But the above is subject to qualification that there may be less serious offences in which the court may refuse bail, because of its nature."

2. High likelihood of the accused absconding

The conduct of the accused before and after his arrest demonstrates a clear propensity to evade justice. The accused's willingness to hide from authorities reveals that he cannot be trusted to surrender to the court's jurisdiction if released. The Investigating officer

depones that after the commission of the offence, the accused hid for three days and only resurfaced to visit the deceased's father to gauge their knowledge of the death.

The accused did not voluntarily report to the police, he was forcefully taken to Ruai Police Station by the deceased's father where he was re-arrested. The affidavit also states that two of the accused's accomplices have not been traced. If released the accused is highly likely to join them and disappear completely, frustrating the course of justice.

In ***Kelly Kases Bunjika v Republic [2017] eKLR*** the court held;

"It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that "the accused person is likely to fail to attend court proceedings". The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his "constitutional right to be granted Bond/Bail on reasonable and favourable terms."

3. Lack of a fixed abode

An accused person with no fixed abode is a significant flight risk as there is no known location from which he can be bound to attend court. The Investigating Officer established has no fixed abode within the jurisdiction of the court and had been living on the streets prior to commission of the offence. **In Republic v Peter Kibe Wamugi [2017] KEHC 6329 (KLR)** the court held that the primary consideration for bail is whether the accused will attend trial and if circumstances exist indicating that the accused may jump bail, the court is entitled to decline bail.

The right to bail is not absolute, it is lessened by the court's duty to ensure the administration of justice is not jeopardized. **Article 49 (h) of the Constitution** grants right to bail, but it is subject to the exceptions set out, including the protection of the criminal justice system.

The Court orders that the accused to be remanded in custody pending the hearing and determination of this case.

AFFIDAVIT IN OPOSITION OF BOND

1. No. 80987 CPL HENRY KIMUTAI Investigating Officers in this case filed an Affidavit and stated as follows:
2. THAT on 30th October 2024 at the Ruai Police Station, it was reported that a body of a male person was lying inside an unfinished building at Matikari area, Ruai Sub-County in Nairobi County.
3. THAT investigations that were immediately launched indicated that the deceased met his death through unnatural causes to wit manual strangulation in the hands of the accused person and two other persons not before court after they were seen carrying him from a bar (Njoki's bar) in the guise that they were taking him to sleep.
4. THAT during investigations it was established that after commission of the offence, the Accused person went into hiding in Kiambu for three days after which he visited deceased's father to establish if they had information of the demise of the deceased.

5. THAT upon resurfacing, the deceased's father forcefully took the Accused person to Ruai Police Station where he was re-arrested by the police
7. THAT two of the Accused persons accomplices have not been traced and he is apprehensive if released on bond, the Accused may join them and disappear without a trace.
6. THAT as the lead investigator in this case he had established that the Accused person herein has now no known fixed abode within the jurisdiction of this Court
noting that he had been living on the streets prior the commission of the offence
7. THAT the conduct of the Accused person herein immediately after the incident, being that of fleeing from the scene and relocating to Kiambu with no known contacts is compelling reason, enough to suggest that if released on bond, he will not willingly subject himself to the jurisdiction of this court effectively leaving the case in jeopardy.

8. THAT the Counsel on record advised the state the nature of the charges facing the Accused persons herein are of a serious nature and that this, coupled with the above is incentive enough for the Accused person to flee from the court's jurisdiction if granted bond.

9. THAT the prosecution is ready and willing to expedite this matter each time the case comes up for trial.

10. That the release of the Accused person on bail pending the hearing and determination of the trial is not absolute and is at the discretion of the court thus urge the court not to grant/release the accused person on bail.

PRE-BAIL REPORT

1. The family background and Personal history of the Applicant is that he is from Kiambu County and the family relocated to Ruai and other siblings of the Applicant are in Nyandarua. The Accused person had no previous criminal history. The family agreed that the Applicant could reside in the village and

attend Court's hearing if released on reasonable bail & bond terms.

2. Victim's concerns, the deceased resided in Ruai had 2 children residing with his parents. The deceased and Applicant were good friends since childhood and they were paternal cousins. The family opposes release on Bail & bond especially before the Accomplices are apprehended who absconded from the scene after the incident.
3. Community Ties, Village Manager Knew Accused person's father, although he lived in Ruai he had no fixed abode and he co habited with friends in abandoned unfinished houses in a place called 'Labor' where people looking for manual jobs , mainly masonry live.
4. The Probation Officer recommended that the victim's family is yet to come to terms with demise of their loved one, these are members of the same/one family. The Accused person fled after the incident and the Accomplices have not been arrested, the granting of bail/bond to be deferred if at all to later date, for arrest of accomplices first, the victim's family to recover from trauma of losing a loved one.

DETERMINATION

Bail is a constitutional right enshrined in **Article 49(1)(h) of the Constitution**. The test the Court is required to use to deny bail in appropriate cases is similarly stated in **Article 49(1)(h)**: it is only upon the showing of compelling reasons by the Prosecution that the Court will deny bail. **Section 123 & 123A of the CPC and Bail & Bond Policy Guidelines of 2015** provide guidance on consideration of bail & bond Application.

In **Patius Gichobi Njagi & 2 Others V Republic, [2013] eKLR** the Court in expounding on the Prosecution's duty to disclose compelling reasons if opposed to bond pending trial stated as follows:

".... where the State opposes bail on account of any of the often-cited and commonly known fears which it routinely expresses including, but not limited to the likelihood of the accused absconding and failing to attend trial; likelihood of interference with witnesses; the possibility of hostile and even violent reception of the accused by the community upon release, the state must do more. It must step out of the realm of imagination and speculation and provide the court with persuasive argument backed by facts and experiences, and circumstances unique to each individual case

that would make the court appreciate the need to deny an applicant bail. As stated in the celebrated case of Jaffer V Republic, 1973 E.A. 39, the court cannot be called upon to speculate.”

In the case of Republic v Mayende & 4 Others Bungoma High Court Criminal Case No. 55 of 2009, the court stated that :-

In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general, as envisioned by the people of Kenya in the Preamble to the Constitution of Kenya, 2010.....Threats or improper approaches to witnesses, although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give schewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is it is a justifiable reason to limit the right to liberty of the accused.

The Court has taken into account the Application for Bail/Bond; Affidavit to oppose Bail/Bond by Investigation Officer and Pre-Bail Bond Report. The main issue other than murder is a serious offence and the evidence by Prosecution maybe overwhelming; the Accused person is presumed to be innocent until proved otherwise at trial and of paramount importance ensure that he will attend Court.

The Report indicates the Accused person has no fixed abode but family agreed as per Pre-bail report to stay with him in Kiambu.

The only issues curtailing his release on bail and bond are compelling reasons that the Accused and deceased are of 1 family related and for now victim's family opposed bail/Bond. Secondly, the Prosecution opposed bail as the accused fled after the incident and hence a flight risk and his Accomplices are still at large. These are pertinent issues

To be resolved before Bail/Bond is granted.

DISPOSITION

1.The Application for bail & bond is denied at this stage to allow complete investigations

and/or arrest arraignment of Co Accused persons.

2. The Accused person and deceased are family members, for now there would be likelihood of interference of relevant/crucial witnesses (family members) Thereafter , bail/bond shall be reconsidered.

3. The hearing of the matter shall be expedited.

4. FMD on 21/3/2026

RULING DELIVERED SIGNED & DATED IN OPEN COURT CRIMINAL DIVISION NAIROBI ON 16/3/2026 VIRTUALLY/PHYSICALLY

M.W. MUIGAI

JUDGE