



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njoroge (Criminal Case E004 of 2025)
[2025] KEHC 11450 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E004 OF 2025
DO CHEPKWONY & FR OLEL, JJ
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL NDUNGU NJOROGE ALIAS SAMMY ACCUSED

RULING

1. The Accused person Samuel Ndung'u Njoroge alias Sammy is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), Laws of Kenya.

The Particulars of offence is that: -

“On the night of 2nd January, 2025 at Kagwe Town in Lari Sub County within Kiambu County, the accused murdered one George Waweru Ndichu.”

2. The accused was arraigned in court on 29th January, 2025 whereby the Deputy Registrar directed that he be remanded in custody as he undergoes a mental assessment and awaits to be assigned counsel so he can take plea before the High Court.
3. On 3rd February, 2025, having been confirmed mentally fit to plead and assigned Mr. Mayieka as his legal counsel, the charge was read and full information explained to the accused whereby he pleaded ‘Not Guilty’ to the offence of Murder. His counsel proceeded to seek for his release on bail and bond terms, which application was opposed by the prosecution’s counsel for the reason that the Investigating Officer had filed an Affidavit in opposition thereof and requested that a Social Inquiry on the accused be conducted on the accused by the Probation Officer and a Pre-bail Information Report be filed for consideration. The Pre-bail Information Report was filed on 28th February, 2025.
4. For determination before this Court is an application for the accused who is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).



5. The right to bond or bail for every accused is provided for under Article 49[1][h] of *the Constitution* which states 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.”

6. From the wording of this provision, this right is not absolute as the same may be denied where the State demonstrates ‘compelling reasons’. In the case of *Republic v Joseph Thiongo Waweru & 17 Others* [2017] eKLR, the Court had the following to say of ‘compelling reasons’:-

“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.”

7. The factors to be considered by the courts in determining whether or not to grant an accused release on bond or bail are set out under Section 123A of the *Criminal Procedure Code* as follows:-

“In such determination, the courts are to factor the following exceptions to limit the right to bail;

- a. the nature of 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 as 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.”

8. These factors have been restated as a general guideline at Paragraph 4.9 of the Bail and Bond Policy Guidelines for the Judiciary as follows:-

- i. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- ii. The likelihood of interfering with witnesses.
- iii. The accused person is a flight risk.
- iv. Whether the accused person is gainfully employed.



9. In the said Bail and Bond Policy Guidelines, the provisions of Article 50[2] of *the Constitution* have been used as a basis to recommend that:-

“The presumption of innocence dictates that accused person 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. The accused person’s counsel urged the court to consider granting him release on bail or bond terms on the basis that the accused is still innocent until proven guilty. That he is a family man and needs to take care of them, and that he undertakes to provide maximum co-operation during trial. On the issue of having other cases, counsel has argued that the accused is out on bond and has never absconded in either court sessions.
11. In the Affidavit to oppose bond sworn and filed by No.112804 PC Kibet Chelogoi, it is averred that the accused was arrested following an assault report made at Kagwe Police Station vide OB No.02/03/01/2025 in respect of George Wawere Ndichu who succumbed to the injuries sustained and was thus charged with the offence of Murder. According to the Investigating Officer, it is established that the accused is facing Murder charge vide Kiambu HCCR. No.34 of 2017 which is still pending Judgment before court, hence he is a flight risk. The Investigating Officer has urged that the accused be denied release on bail or bond for the sake of his own safety and that of the witnesses.
12. From the Bail Information Report filed on 28th February, 2025 it is noted that the Probation Officer in conducting a Social Inquiry looked at the accused person’s family circumstances, his personal circumstances and means, abuse 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 his conclusion and recommendations.
13. This Court has read through and considered the said report and find it has been indicated that the accused person is thirty-two [32] years old, husband and father to two [2] children who rely on him for emotional and financial support. It is also confirmed that the Accused has another murder case being Kiambu HCCR No. 34 of 2017 where he was granted release on a bond of Kshs. 500,000/=, which case is about to be concluded. According to the Probation Officer, the family of the accused is deeply supportive and are willing to mobilise resources to secure his release but have reservations and are fearful of the anger and hostility of the community towards the accused and the potential risk to the entire family due to the pending case where the offence is similar to the instant one. On the part of the victim’s family it is indicated that the family was still mourning the loss of their kin who they describe as being the family’s backbone. They are also afraid of their lives. The community and local administration are said to be deeply unsettled by the incident and harbour intense anger towards the accused. The area could be exposed to serious harm from vigilante justice. On being interviewed, the Investigating Officer restated his averments in his Affidavit where he opposed the accused person’s release on bail and bond terms.
14. In conclusion, the Probation Officer has indicated that following the ongoing murder trial, this present murder case, opposition and sentiments of the victim’s family, the community’s anger and hostility alongside the escalating family disputes, the accused is not suitable for release on bail or bond terms at this stage.



15. This Court has considered the entire Pre-bail Information Report, the concerns by the Probation Officer in his conclusion and finds that the same amount to ‘compelling reasons’ which warrant the accused person’s application for release on bail or bond terms to be declined.
16. The court then proceeds to adopt the recommendation by the Probation Officer and orders the accused to remain in custody as there will be a demonstration on change of circumstances.
17. It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JULY, 2025.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF JULY 2025.

FRANCIS RAYOLA OLEL

JUDGE

