



**Republic v Kipkoech & 4 others (Criminal Case E005 of 2024)
[2024] KEHC 9445 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E005 OF 2024**

**RB NGETICH, J
JULY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

CHARLES KORIR KIPKOECH 1ST ACCUSED

LEMISO FRANCIS KIPARUS 2ND ACCUSED

STANLEY NJOROGE CHEGE 3RD ACCUSED

MBUGUA SIMON MWAURA 4TH ACCUSED

ERIC MWAURA NJENGA 5TH ACCUSED

RULING

1. The accused persons Charles Korir Kipkoech, Lemiso Francis Kiparus, Stanley Njoroge Chege, Mbugua Simon Mwaura And Eric Mwaura Njenga have been jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that the accused on the 8th day of May,2024 at Maji Mazuri Forest sub-county within Baringo County, unlawfully killed Stephen Mwangi.
2. All the accused persons denied the charge and through their Advocates applied to be released on bond pending the hearing and determination of this matter. The prosecution opposed the application for bond on grounds that the accused persons are likely to interfere with witnesses, that the charge the accused are facing is a serious matter which attracts a maximum penalty of death if found guilty and lastly that this matter is a matter of public interest which has trended in social media and the country is expected to see the outcome of these proceedings and the ground is still hostile.
3. The prosecution while opposing bond relied on affidavit sworn by NO. 113824 PC Elkana Mariita of Directorate of Criminal Investigation Koibatek Sub County who is the investigating officer herein.



- He avers that accused persons are Kenya Forest Rangers stationed at Maji Mazuri Forest Station and the key witnesses reside within the accused person's area of jurisdiction and if the accused persons are released on bond/ bail, they are likely to intimidate, threaten or otherwise interfere with the witnesses.
4. That for the sake of preservation of evidence, it is prudent and desirable for the accused person's right to bail/bond be denied and further the community is hostile towards the accused persons and if released on bond their lives are at a risk.
 5. This court called for a pre-bail reports to be filed to assist the court in determining bond. The Pre-bail reports of the accused persons were duly filed as directed.

Prebail Reports

1st Accused Report

6. From the report, the 1st accused is a forest officer working at Majimazuri forest where he has worked since November 2022 up until the time of arrest. He is married with 4 children. The father is willing to secure his release using a Motor Vehicle Log book.
7. From the report, the victim was not known to the 1st accused and he has not been involved in past criminal activities. The 1st accused stated that his safety is not likely to be at risk if released on bond and says he will remain in his rural home in Konoin Sub County which is away from the vicinity of the late victim's family and chances of interfering with witnesses is therefore slim.
8. The mother to the late victim expressed bitterness towards the 1st accused and is opposed to his being granted bond citing fear for her life.
9. The officer in charge of 1st accused's work station said he was fairly new in the station and had not interacted with the 1st accused. He therefore could not comment about him expressly. The officer commits to ensure that the 1st accused adheres to the bond conditions that the court would set.
10. The area administrator indicated that a meeting was convened after the incident as there was an air of animosity between the residents of Maji Mazuri and the forest officers and after the meeting, the two groups agreed to co-exist peacefully and drop hostilities. He said after the meeting, there has been tranquility in the community.
11. The probation officer is of the view that the 1st accused is suitable to be granted bond terms that the court deems appropriate as long as he resides away from the late victim's family.

2nd Accused Pre-bail Report

12. From the report, the 2nd accused is an employee of Kenya Forest Service and was posted to Maji Mazuri forest station in March 2023 where he has worked up and till the time of his arrest. He is not married but he is engaged. He stated that he was medically sound but currently experiencing pain in one ear and had not yet been accorded medical attention.
13. The 2nd accused's father is willing to secure his release on bond using a Title Deed. The sentiments of the local administration, victim and opinion given by the probation officer are similar to the 1st accused as captured above.

3rd Accused Pre-bail Report

14. The 3rd accused was employed by Kenya Forest service and posted to Maji Mazuri forest since August 2023, where he has worked up to the time of his arrest. He is not married. He stated that he does



not suffer from any serious medical condition apart from occasional nose bleeding which he has been managing.

15. The mother to the 3rd accused stated that the family was willing to secure his release using a Title Deed for a land measuring about 5 acres. He stated that if granted bond, he would remain at his rural home in Kandara Sub County which is away from the vicinity of the late victim's family and chances of interfering with witnesses are therefore minimal. He has no previous criminal record.
16. The sentiments of the local administration, victim and opinion given by the probation officer are similar to the 1st accused as captured above.

4th Accused Pre-bail Report

17. The 4th accused was employed by Kenya Forest Service in October 2023 and posted to Maji Mazuri forest station where he was working up to the time of his arrest. He is not married.
18. The mother to the 4th accused stated that the family was willing to secure his release using a Title Deed measuring about 2 acres. He had not been involved in past criminal activities. There were no indications of a likelihood of committing another offence.
19. The 4th accused stated that his safety is not likely to be at risk if released on bond as he will remain at his rural home in Kigumo Sub County in Murang'a County which is away from the vicinity of the late victim's family.
20. The sentiments of the local administration, victim and opinion given by the probation officer are similar to the 1st accused as captured above.

5th Accused Pre-Bail Report

21. The 5th accused was employed by Kenya Forest Service in October 2023 and posted to Maji Mazuri forest station where he was working up to the time of his arrest. He is not married.
22. The 4th accused's sister stated that the family was willing to secure his release using Land Title Deed. He has not been involved in past criminal activities. He says his safety is not likely to be at risk if released on bond as he will remain at his rural home in Gatundu South Sub County which is away from the vicinity of the late victim's family and chances of interfering with evidence and witnesses are minimal.
23. The sentiments of the local administration, victim and opinion given by the probation officer are similar to the 1st accused as captured above.

Determination

24. Under Article 49(1)(h) of *the Constitution*, every 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 unless there is some compelling reason.
25. 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.



26. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provides 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—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;
should be kept in custody for his own protection.
27. The accused persons herein have been charged with a serious offence which attracts heavy penalty but despite the gravity of the offence, the accused persons are deemed innocent until proven guilty; and the fact that they are deemed innocent until proven guilty should be reflected in the way the courts treats them while undergoing trial.
28. The prosecution further stated that the matter has attracted social media attention and in their view that should contribute to how this court deal with their bond application. My view is however different, the fact that this matter may have attracted much media attention should not be a factor to be considered while determining whether the accused persons should be admitted to bond or not.
29. 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.
30. On whether the accused persons are likely to interfere with witnesses, the prebail reports indicate that the accused persons are fairly new in Maji Mazuri area where the incident occurred, they were not known to the victim before the incident and they promise to settle in their various rural home during the period of trial and will not therefore interfere with witnesses. The Local administration also confirmed that the Maji Mazuri and Kenya Forest communities have had a meeting and they have resolved to coexist peacefully which has contributed to minimizing hostility between the two communities.
31. Further, all the accused persons have indicated that they do not feel that their lives will be at risk if they are released on bond. In view of the above, I find that there are no compelling reasons to deny accused persons bond.
32. Final Orders: -
Each accused may be released on bond of kshs 500,000 with one surety of a similar amount.



RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 31ST DAY OF JULY 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis

Ms. Ratemo for state

Ms. Rotich H/B for Mr. Mongeri for 1st Accused

Mr. Ayabei for 1st and 2nd Accused

Mr. Njoroge H/B for Mr. Mwangi for Accused 4

Mr. Sikolia for KNCHR for victim's family

