



**Republic v Kiprop (Criminal Case E004 of 2024)
[2024] KEHC 9298 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E004 OF 2024**

**RB NGETICH, J
JULY 30, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHANA KIMOLOP KIPROP ACCUSED

RULING

1. The accused person has been charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge are that on the 7th day of May, 2024, at Chepyuan Sub-Location, in Molo Sirwe Location, Mogotio Sub-County within Baringo County, the accused unlawfully killed Joseph Komen Kandie.
2. The accused pleaded not guilty to the charge. The prosecution did not oppose the accused being released on bond but prayed that the accused be given strenuous bond terms because he may be a flight risk. They stated that by the time he was arrested he had relocated.
3. The defence counsel Mr. Mwaita submitted that the prosecution ought to have filed an affidavit since the information he has is that the accused was going to Mogotio to report and that is when he got into an accident and was injured. Counsel indicated that the accused is not a flight risk, that he has a fixed place of abode in Chepyuan village. He submitted that the accused is married with 5 children four of them are attending Chepyuan primary school within the village. That his wife is a house wife and the accused is a farmer. He further submitted that the accused has a disabled father who depends on him and his parents separated 14 years ago. He submitted that the accused has a surety.
4. The court called for a pre-bail report to be filed to assist the court in determining bond.



Prebail Report

5. From the report, the accused is aged 36 years and married with 5 children. He is a sole bread winner and takes care of his elderly father. The victim was an uncle to the accused. They stated that the victim and his brother (William) who also happen to be the area village elder had a misunderstanding on matters concerning felling down of trees for charcoal burning. The quarrel escalated to a fight where those working together with them tried to separate them. The duo were all drunk. It was stated that the accused passed by the homestead where the two were fighting and as he also tried to separate them, the victim hit him back and in the process of self- defence, the accused hit the deceased with a stone. The family members noted that there has never been any grudge between the two persons and the accused was not drunk at the time of the offence.
6. The victim in this matter was 41 years old, married with seven children, five of whom are pre-schooling and need care and protection. He had separated with his wife due to family difference but she has since returned to take care of the children. The family members interviewed expressed concern and wished that the accused remain in custody to avoid retaliation. The victim's elder son stated that the accused is a threat to the family especially to the children who live in fear of attack hence releasing the accused would haunt them for his action. The victim's family is very bitter with the accused for having killed their bread winner whom they looked up to. The brother to the victim also expressed his fear and that of the victim's mother who has lived with bitterness towards the accused and vowed that should he be released, they shall take law in their hands.
7. The local administrator indicated that the accused is a well-known person to him with good character in the area. He said he is a nephew to the victim and used to be a member of Nyumba kumi in the area. He stated that the accused had good community ties and was a trustworthy person in the area. He indicated that the accused had no record of criminality and the one who takes care of his elderly father. He further stated that the accused was not a flight risk and had good ties in the community. He however says the matter is still very fresh in people's mind and would trigger emotions to the family members who have not processed the matter. The administrator's view is that accused's life may be in danger having in mind that the victim's children who depended on the victim have no bread winner as their mother is a house wife.
8. The accused's mother indicated that the accused's uncle had shown willingness to stand surety for him but he has committed his title deed to a loan hence could not give it a security. Efforts to get somebody else was futile as those approached were not ready to stand surety for him due financial constraints.
9. The victim's family stated that the accused had knowledge of the family members and feared that he could intimidate witnesses and may interfere with the evidence should he be released. It is their prayer that the accused remain in custody and go through trial while confined to separate him from them and enable them heal as it is still early and they are still processing their thoughts.
10. The probation officer's view is that the accused is not suitable for bond/bail until such a time when emotions subside and a review can be done at a later date and also urged court to note that no one was ready to stand surety for him due to economic situation at home.

Determination

11. 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.



12. 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.
13. 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—
 - i. the nature or seriousness of the offence;
 - ii. the character, antecedents, associations and community ties of the accused person;
 - iii. the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - iv. 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.
14. 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.
15. I have considered sentiments by the victim's family and the local administration. The family of the victim are still bitter and from the local administration's view, the applicant's life may be endangered if released on bond at this stage of trial. In view of the above, I am inclined to decline accused's payer for bond but he is at liberty to reapply at a later date if circumstances change.
16. Final orders: -
 1. Accused's application for bond is rejected.
 2. Accused may reapply for bond at a later date if circumstances change.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF JULY 2024.

.....

RACHEL NGETICH

JUDGE

In the presence of:



- * CA Elvis
- * Ms. Ratemo for state
- * Accused Present

