



**Republic v Chesire (Criminal Case E006 of 2024)
[2024] KEHC 9301 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E006 OF 2024
RB NGETICH, J
JULY 29, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL AMDANY CHESIRE ACCUSED

RULING

1. The accused Samuel Amdany Chesire 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 were that the accused on the 18th day of May, 2024 at Kiplekwa village of Makutano Seretunin Sub- Location, Ewalel location within Baringo Central Sub- County in Baringo County, murdered one Kelvin Kimuge Chesire.
2. The accused denied the charge and the prosecution did not oppose the accused being released on bond. The court called for a pre-bail report to be filed to assist the court in determining bond.

PREBAIL REPORT

3. From the report the accused is aged 23 years old. He sat for KCSE in the year 2015 and managed to score a mean grade of C plain. He did not continue with his education due to his own will and peer influence that boda boda business will make him rich faster. For a living, the accused did boda boda business and masonry work within the community. He is married with two children.
4. The accused’s father indicated that he is willing to stand surety for his son indicating that he has already lost one son. The uncle who is family elder stated that as a family, they have not sat down to have a discussion over the accused person being admitted into bond terms at the moment. He opposed the accused person prayers to be admitted into bond/bail on ground that at the family level, animosity is still very high and he should be admitted at a later period when the tempers within the family have dropped. The probation officer indicated that the accused’s father was not willing to allow any other



member of the family to talk and the accused person has very little support from his siblings and the mother.

5. The accused stated that he takes alcohol and he used to sell second generation spirits within the community. He stated that he understands the seriousness of the offence and he is aware of the consequences.
6. The local administration noted that the offence took place at a family level. He noted that at the family there is tension and animosity between themselves. The father to the accused is not willing to facilitate meeting to be held for them to have a common stand. He added that at the community level the members are opposed to accused being admitted to bond now; they prefer he be admitted to bond later in the trial. The accused's father indicated that he is willing to stand surety to his son by providing his pay slip or title deed once the court has pronounced it.

Determination

7. 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.
8. 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.
9. 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.
10. 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.



11. From sentiments given by the local administration, the offence took place at the family level and there is still animosity within the family and they are not receptive of the accused and his security is not guaranteed. In my view, threat to accused's security is compelling reasons to warrant denying accused bond.
12. Final Orders: -
 1. Application for bond is hereby rejected.
 2. Accused may renew bond application at later stage of trial if circumstances change.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF JULY 2024.

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RACHEL NGETICH
JUDGE

In the presence of:

CA Elvis

Ms. Ratemo for state

Accused present

No appearance by counsel for accused.

