



**Republic v Hassan (Criminal Case E007 of 2024)
[2024] KEHC 13422 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E007 OF 2024
RB NGETICH, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ABDUKHADIR YUNUS HASSAN ACCUSED

RULING

1. The accused Abdukhadir Yunus Hassan has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence being that the accused person on the night between 31st day of July, 2024 and 1st August,2024, at Nubian village, Eldama Ravine Location in Koibatek Sub- County within Baringo County murdered Philis Cheruto Koech.
2. Upon the charge being read and explained to the accused on 16th September,2024, he denied the charge and a plea of not guilty was entered.
3. The prosecution informed the court that they were not opposed to the accused being released on bond/ bail. The court called for prebail report to assist in determining bond terms. The report was duly filed on the 30th September,2024 as directed.

Pre-bail Report

4. From the report, the accused is aged 42 years old. He engaged himself in casual jobs both in Eldama ravine and Marigat Town. He was married to the late victim Phylis Cheruto Koech and they had one child aged about 2 years old. The child is currently under the guardianship of her grandmother (mother to the accused person) living in Marigat. The accused denies committing the offence. The late victim was the wife to the accused person. The accused’s family are willing to stand surety for him.
5. The victim’s relatives are still bitter. They are opposed to accused being released on bond as they feel insecure as they had not been in good relations with the accused even before the fateful incidence. They



stated that they had prevailed upon the late victim to leave the abusive marriage but unfortunately, she died before considering their advice.

6. The community through the local administration associate the accused to past criminal activities. They stated that he has been involved in assault, creating disturbance, stealing among others. The report indicates that the records were not availed to support the above.
7. The local administration are of the view that the accused is likely to commit another offence having had a history of criminality. On the other hand, the accused stated that his safety is not at risk if released on bond.

Determination

8. 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. It provides that:-

“An arrested person has the 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.”

9. 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.

10. 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—

- (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—

- (a) 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;
- (b) should be kept in custody for his own protection.

11. 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.

12. From the sentiments herein, the accused has history of criminality. No records have however been availed. The victim's family are still bitter and for that reason, it is indicated that accused's life is in danger. On his part, the accused is not fearing for his life. There is no doubt that bitterness following loss of a loved one take time to fade away. I also take note of the fact that the accused is presumed innocent until proven guilty and at this stage of trial, he should not be treated as a convict. In respect to witnesses, the investigating officer has not filed any affidavit demonstrating likelihood of interference with witnesses. In view of the above, I see no compelling reason to deny accused bond.

13. Final Order: -

Accused may be released on bond of Kshs 500,000 with one surety of a similar amount.

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

RACHEL NGETICH

JUDGE

In the presence of:

Elvis – Court Assistant.

Ms. Omari for State.

Accused present.

