Republic v Koskei & another (Criminal Case E010 of 2024) [2024] KEHC 13237 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13237 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

CRIMINAL CASE E010 OF 2024

JK SERGON, J

OCTOBER 30, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

LAMECK KIPROP KOSKEI ..... 1ST ACCUSED

KEVIN CHERUIYOT RONO ..... 2ND ACCUSED

RULING

1. Lameck Kiprop Koskei and Kevin Cheruiyot Rono the Accused herein were charged with the information of Murder Contrary to Section 203 as read with 204 of the Penal Code. The Particulars of the information are that on the 1st day of April, 2024 at Kipkok Village in Soin Sigowet Sub - County within Kericho County, the accused murdered Alice Tabutany Koech.

2. The accused persons pleaded not guilty to the offence. The Accused have now applied to this court to be released on bond pending trial.

3. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions did not oppose the Accused Persons' application for bond.

4. The county probation officer was directed to file pre-bail probation reports within 7 days from the date of the directive. The probation officer complied and filed probation reports in respect of both accused persons, however, this court vide its ruling dated 11th June, 2024 declined to grant bail to the accused persons on account of their personal safety in the community as the murder incident was still fresh. This court gave orders that the accused were at liberty to file a fresh application for bail after the lapse of three (3) months from the date of the said ruling.

5. It is against such background that the accused persons made a fresh application for bail and the county probation officer was directed to file fresh pre-bail probation reports within 14 days from the date of the directive.

6. Mr. Malel the Learned Counsel for the accused stated that circumstances had changed and the families of the deceased and accused had met. The Learned Counsel stated that there was a possibility that the charges against the 1st accused would be withdrawn.

7. The county probation officer filed a pre bail report in respect of Lameck Kiprop Koskei, the 1st accused, in the said report, the probation officer noted that the accused is not a flight risk, he has a fixed abode and practises subsistence farming on the family land.

8. The family members were willing to deposit the requisite security for his release on bond. The family members had reached out to the victims relatives for reconciliation and talks as to how to secure the release of the accused on bond while they pursue justice in court.

9. The probation officer noted that bitterness and hostility from the victim's family had subsided and the community held no grudge against the accused, therefore the local administrator recommended that the accused be considered for bond.

10. The probation officer further noted that the current home environment was longer hostile, there was tranquility thereby creating a safe environment for the accused. The probation officer therefore recommended that this court should release Lameck Kiprop Koskei on favourable bond terms and allow the family to deposit the requisite security.

11. The county probation officer filed a pre bail report in respect of Kevin Cheruiyot Rono, the 2nd accused, in the said report, the probation officer noted that the accused is not a flight risk, he has a fixed abode and practises subsistence mixed farming on the family land. The family members were willing to deposit the requisite security for his release on bond. The family members will ensure that the accused attends court as and when required.

12. The probation officer noted that bitterness and hostility from the victim's family had subsided and the community members were aware that reconciliation processes were ongoing and that there was a need for the affected families to explore justice in a court of law.

13. The probation officer noted that the current home environment was longer hostile, the affected families had embraced reconciliation thereby creating a serene environment to accommodate the accused upon release. The probation officer noted that the hostility in the community had subsided thereby creating a safe environment for the accused and therefore urged the court to review bond terms. The probation officer therefore recommended that this court should release Kevin Cheruiyot Rono on favourable bond terms and allow the family to deposit the requisite security.

14. The right to bail is both constitutional and statutory, an accused person has a constitutional right to be released on reasonable bail terms unless there is a compelling reason not to grant the accused person bail.

15. The right to bail is entrenched in article 49 (1) (h) of *the Constitution* which states as follows:- "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."

16. As a constitutional right, its enjoyment can only be limited if exceptional circumstances are established. In interpreting the right to bail, section 123A of the Criminal Procedure Code CAP 75 Laws of Kenya sets the parameters for the grant of the right to bail.

17. In Republic v John Kahindi Karisa & 2 others [2010] eKLR the court observed as follows; "A murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."

18. In the instant matter, I have taken cognizance of the change in circumstances, the home environment is no longer hostile and therefore there are no compelling reasons not to release the accused persons. I hereby allow the application for bond, the applicants namely: Lameck Kiprop Koske and Kevin Cheruiyot Rono be released on a bond of Kshs.200,000/= and with one surety of a similar amount.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 30TH DAY OF OCTOBER, 2024.

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

S/Counsel - Musyoki

Accused – Present in Person

Shikuku for the 1st Accused

Malel for the 2nd Accused