



**Republic v Chesire (Criminal Case E003 of 2024)
[2024] KEHC 13081 (KLR) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E003 OF 2024
RB NGETICH, J
OCTOBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL KAIMOI CHESIRE ACCUSED

RULING

1. The accused person Samuel Kaimoi Chesire 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 22nd day of March, 2024, at Heritage near national oil filling station within Kabarnet township in Baringo County, murdered one Sammy Boit Kiprop.
2. On the 6th Day of June, 2024 this court declined to grant the accused bond on ground that the accused had reoffended while on bond and due to the fact that home environment was hostile as the victim’s family were still bitter.
3. On the 11th July, 2024, the accused through his counsel on record re-applied for bond and submitted that he has a fixed abode. The court called for a 2nd pre-bail Report to be done.
4. Four witnesses testified on the 30.09.24 and the 2nd pre-bail report having been filed, this court was to look at the report and deliver ruling on 28th October,2024.

2nd Pre-bail Report

5. From the report, the accused’s sisters indicated that as a family, they are ready and willing to provide surety for the accused and will ensure he attends court when required. She further added that they do understand the seriousness of the offence and if the accused is released on bond, they will move him to their home in Kuikui and will support him with fare to attend court. The accused also stated that he understands the seriousness of the offence and undertakes to attend court when required.



6. The accused's mother is still opposed to bond on ground that the accused's family have not gone to their family to give condolences neither did they help in any way with burial arrangements. The local administration on the other hand indicated that they met with accused's family members who promised to relocate the accused and support him with fare to attend court.

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. Further, 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.
9. 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.
10. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline March, 2015 in Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”
11. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:-
 - a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - a. The strength of the prosecution case.



- b. The character and antecedents of the accused person.
 - c. The failure of the accused person to observe bail or bond terms.
 - d. The likelihood of interfering with witnesses.
 - e. The need to protect the victim or victims of the crime.
 - f. The relationship between the accused person and the potential witnesses.
 - g. The best interest of child offenders.
 - h. The accused person is a flight risk.
 - i. Whether the accused person is gainfully employed.
 - j. Public order, peace and security.
 - k. Protection of the accused persons.
12. From the second presentence report, the victim’s mother is opposed to bond on ground that the accused’s family have not conveyed any condolences to them neither have they offered any support following the death of the deceased. There is no doubt that bitterness is bound to exist where no apologies have been offered and no support given following loss of a loved by persons or people associated with the person alleged to have committed the offence. However as at now, the accused is presumed innocent until proven guilty and should not be treated as a convict at this stage of trial.
13. 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.
14. Further, I note that there is no mention of likelihood of accused interfering with witnesses and on place of aboard, the accused’s family have indicated that he/accused will stay at their home in Kuikui and they have committed to support him with fare to attend court. Upon considering sentiments by the victim’s family, accused’s family and the local administration, I see no compelling reason to deny accused bond.

Final Orders: -

15. 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 28TH DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo for State.

Mr. Chebii for Accused.

Accused Present.

