



**Republic v Ngetich (Criminal Case E013“B” of 2024)
[2024] KEHC 14852 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14852 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E013“B” OF 2024
JK SERGON, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

HILLARY KIPKURUI NGETICH ACCUSED

RULING

1. Hillary Kipkurui Ngetich 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 27th day of April, 2024 at Kebeneti Area in Soin Sigowet Sub - County within Kericho County, the accused murdered Francis Kibor Korir. The accused person pleaded not guilty to the offence. The accused person applied to this court to be released on bond pending trial.
2. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the Accused Persons’ application for bond.
3. The County Probation Officer was directed to file a pre-bail probation report. The Probation Officer complied and filed a probation report in respect of the accused person, however, this court vide its ruling dated 10th July, 2024 declined to grant bail to the accused person on account of his personal safety in the community as the murder incident was still fresh. This court gave orders that the accused be at liberty to file a fresh application for bail after the lapse of three (3) months from the date of the said ruling.
4. It is against such background that the accused person through his advocate Mr. Kiprono made a fresh application for bond. Mr. Musyoki the Learned Senior Assistant Deputy Director of Public Prosecutions vehemently opposed the application for bond as the accused is not a first offender and has previous records.



5. The Learned Prosecutor stated that the accused was convicted and sentenced to one (1) year probation for the offence of assault causing actual bodily harm vide Kericho Chief Magistrate Court Criminal Case No. 388 of 2022 and committed the instant offence while serving the said sentence.
6. The Learned Prosecutor contended that the accused had threatened prosecution witnesses. The Learned Prosecutor reiterated that the circumstances have not changed and that the security of the accused is not guaranteed. The County Probation Officer was directed to file a fresh pre-bail probation report
7. The County Probation Officer filed a pre-bail report in respect of the accused, and noted that the accused has previous criminal records as he was convicted with the offence of assault causing actual bodily harm vide Kericho Chief Magistrate Court Criminal Case No. 388 of 2022 where he was sentenced to serve one year community service order.
8. The probation officer noted that the accused does not have a fixed abode and that he is a flight risk.
9. The Probation Officer stated that the family of the victim are very bitter and strongly opposed to the release of the accused on bond. The family of the accused were undecided on whether or not the accused should be released on bond, however, they expressed fear of hostility towards the accused in case he is released on bond.
10. The local administrator reported that the accused has a history of criminality which earned him a bad reputation in the community who are strongly opposed to his release on bond.
11. The social inquiry findings revealed the hostility in the village and the bitterness expressed by the different sections of the community. The probation officer noted that the home environment is not safe for the release of the accused on bond. The probation officer therefore recommended that this Court withhold the release of the accused on bond until the home environment is safe.
12. 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 are compelling reasons not to grant the accused person bail.
13. 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."
14. 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.
15. In Republic v John Kabindi 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."
16. In the instant case, I have taken cognizance of the prevailing circumstances. The home environment is still hostile and therefore the safety of the accused is not guaranteed. This Court has also noted that the accused has past criminal records and that the instant offence was committed whilst the accused was serving a community service order for a prior offence. I hereby disallow the application for bond. The trial of the Accused to proceed while the accused is in custody.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 28TH DAY OF NOVEMBER, 2024.

J. K. SERGON



JUDGE

In the presence of:

Mr. Musyoki – Present

Mr. Langat – C/Assistant

Accused – Present in Person

Kiprono for the Applicant

