



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kirui (Criminal Case E016 of 2022)  
[2023] KEHC 422 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL CASE E016 OF 2022  
RN NYAKUNDI, J  
JANUARY 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SYLVESTER CHERUIYOT KIRUI ..... ACCUSED**

**RULING**

1. What is pending before this court is a bail ruling determining whether the accused should be released on bail. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on July 10, 2022 at Kabaskei village, Chepkumia location within Nandi County the accused murdered Josephat Kibet Kigen.
2. There is a pre-bail report on record filed on December 14, 2022. The accused person is 20 years old. From the report it emerges that the deceased is a first cousin of the accused and he used to harass him. He is described as a humble hardworking and disciplined member of the community. His family has good standing in the community and the chief knows the family well. There have been no adverse reports about him and he is a likeable person. His grandfather is ready to stand surety for him with a title deed for his 8-acre farm located in Chepkumia.

**DECISION**

3. According to the decided cases, in all these cases where bail is discretionary, the proper test of whether bail should be granted or refused is whether it is probable that the accused person will appear to take it is probable that the accused person will appear to take this trial (Re Robinson, 23 L J Q B 286), but the test should be applied by reference to the following consideration: -
  1. The nature of the accusation:
  2. The nature of the evidence in support of the accusation



3. The severity of the punishment which conviction will entail
4. Whether the sureties are independent or indemnified by the accused person. (Archbold, page 68) see also *David Kimani vs Republic* (2021) eKLR.

The above observations lead me to conclude that there are no compelling reasons which would warrant the applicant being denied bail pending the

trial. The pre-bail report have clearly indicated that the situation on the ground is not at all hostile to the applicant as had been pointed out to the trial court.

In the premises, the following orders issue;

1. I grant the prayer for release of the accused person on bond of Kshs 500,000/= with a surety of a similar amount.
2. The accused must attend all mentions and hearing dates as may be fixed from time to time during the pendency of this case or when required by the court unless such attendance is dispensed with by the court.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAPSABET ON THIS 25<sup>TH</sup> DAY OF JANUARY 2023.**

.....

**R NYAKUNDI**

**JUDGE**

