



**Republic v Kiptoo (Criminal Case E021 of 2023)
[2023] KEHC 2773 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E021 OF 2023
RB NGETICH, J
MARCH 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN CHERUIYOT KIPTOO ACCUSED

RULING

1. The accused person 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 are that on 6th day of November, 2022 at Oldebos Location in Mogotio Sub-County within Baringo County murdered Jackson Mandai Ngoitoi.
2. On the 6th March, 2023, the charge and its full particulars were read over and explained to the accused person who denied the charge and a plea of not guilty was entered. The state counsel informed the court that the state is not opposed to the accused being released on bond. The court made an order for a pre-bail report to be prepared by the probation to assist the court in setting bond terms. Pre-bail report for the accused was filed on 17th March, 2023.
3. From the pre-bail report, the local administration acknowledges the strong differences and feelings between the two families and are of the view that the accused can be given bond but he should look for an alternative place to stay during the period so as to avoid escalating the already existing tension between the families.
4. The probation officer in his recommendation states that from the social inquiry conducted, there is tension between the victim’s family and the accused as the memories of what happened is still fresh in their minds.



5. The victim's family do not however oppose the application for bond. The accused's family are prepared to look for alternative place for the accused to stay during the trial period and are ready to produce him in court whenever he is required.
6. Bond pending trial is constitutional right under Article 49(1)(h) of *the Constitution* which provides 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.”
7. The Bail and Bond Policy Guidelines Paragraph 4.9 state as follows: -

“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.”
8. Further the Bond and Bail Policy Guidelines provide for 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.
 - (b) The strength of the prosecution case.
 - (c) The character and antecedents of the accused person.
 - (d) The failure of the accused person to observe bail or bond terms.
 - (e) The likelihood of interfering with witnesses.
 - (f) The need to protect the victim or victims of the crime.
 - (g) The relationship between the accused person and the potential witnesses.
 - (h) The best interest of child offenders.
 - (i) The accused person is a flight risk.
 - (j) Whether the accused person is gainfully employed.
 - (k) Public order, peace and security.
 - (l) Protection of the accused persons.
9. In view of the fact that the family of the accused have offered to deposit security in court, find alternative place of aboard for the accused during trial and have committed to ensure that he attends court when required, there is no compelling reasons to warrant denying accused bond. I therefore allow accused's application for bond on condition set out in my final orders.
10. Final Orders :

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

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF MARCH 2023



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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi & Mr. Sitienei - Court Assistants

Ms Ratemo - Counsel for State

Accused - Present

Mr. Chepkilot - Counsel for Accused

