



REPUBLIC OF KENYA



**Republic v Chemoiwo (Criminal Case E003 of 2023)
[2023] KEHC 3810 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E003 OF 2023
RB NGETICH, J
APRIL 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

WYCLIFFE KIPKORIR CHEMOIWO ACCUSED

RULING

1. The accused Wycliff Kipkorir Chemoiwo has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars are that on the 4th day of March, 2023 at Katane village, Kabutei Location in Baringo North Sub-County within Baringo County murdered Joseph Chemoiwo Chebii.
2. On the March 22, 2023, the charge and its full particulars were read over to the accused person who denied the charge and a plea of not guilty was entered. The state counsel informed the court that they were not opposed to the accused being released on bond and the court directed that pre-bail report be prepared by the probation officer.
3. The pre- bail report for the accused was filed on April 13, 2023. From the report, accused siblings are all opposed to the accused being released on bond on the ground that they are still in fear since the accused has been threatening to kill all of them one day and there is no one to stand surety for the accused if granted bond.
4. The local administration/community described the accused negatively stating that he is an individual who is always under the influence of alcohol; the local administration are opposed to accused being released on bond on ground that the environment is still very hostile and if released, his life will be in danger.
5. Article 49(1)(h) of the *Constitution* provide that an accused person has a right to be released on bond pending a charge or trial unless there are some compelling reasons to deny bond.



6. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya provide factors which the court should consider while determining application for bond as hereunder-

“(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.

7. Paragraph 4.9 of *Bail and Bond Guidelines* provide that the primary factor to be considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail and since promulgation of the *Constitution of Kenya 2010* the challenge the court has in determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences. The Guidelines provide 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.

8. From the probation officer's report herein, the family of the accused are fearful that the accused may harm or kill them if released as he has threatened to kill all of them.



9. I also note from the local administration that the environment is still hostile and it would be in the interest of justice for the accused to remain in custody for his own security
10. From the foregoing, I find that there are compelling reasons to deny accused bond at this stage of the trial
11. Final orders:
 1. Application for bond is declined
 2. Accused may renew bond application at a later date if circumstances change.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 27TH DAY OF APRIL 2023.

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RACHEL NGETICH

JUDGE

In the presence of

Mr. Sitienei - Court Assistant.

Ms Ratemo for State.

Accused – Absent.

