



**Republic v KKR (Criminal Case E004 of 2023)
[2023] KEHC 3878 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E004 OF 2023
RB NGETICH, J
APRIL 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

KKR ACCUSED

RULING

1. The accused Kelvin Kipkorir Rotich has been charged with the offence of Murder Contrary to section 203 as read with section 204 of the [Penal Code](#). Particulars of the charge being that the accused on the 1st day of March,2023 at [particulars withheld] sub-location, Kapropita Location in Baringo Central Sub-County within Baringo county he murdered Daniel Rotich.
2. On the 29th March, 2023, the charge and its full particulars were read over and explained to the accused. He pleaded not guilty to the charge and plea of not guilty was entered. The state counsel informed the court they were not opposed to the accused being released on bond. The court called for pre-bail report which was filed on 20th April, 2023.
3. From the report, the accused is aged 16 years and he dropped out of school in class 8 due to his own personal will.
4. Report from the family indicate that the accused has been a troublesome for a long period of time especially when under the influence of alcohol and drug substance; is mentally unstable and are opposed the accused being admitted to bond stating that they are still in fear that he will do more harm to the family and for his son safety since the community at large is still hostile to him; further none of the family members has offered to stand surety for the accused.
5. The local administration stated that the accused is always under the influence of alcohol and substance use and are opposed to his being released on bond as the environment is still very hostile and if released



his life will be in danger and his family may also be forced relocate for fear of being harmed by the accused.

6. The probation officer's recommendation is the accused should not be released on bond in view of negative sentiments from the accused family, local administration and for his own safety.
7. Under article 49(1)(h) of *the Constitution*, an accused person is entitled to Bail/ pending the hearing and determination of his/her case unless there are some compelling reasons to deny bond; and under article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence and pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management.
8. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provide factors that the court shall take into consideration while considering bond as set out 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.
9. Further, Bail and Bond Policy Guidelines provide general guideline 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.”
10. 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.
 - (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.
11. From the pre-bail report, both the family and local administration have indicated that the environment is hostile towards the accused and his life may be endangered if released. The family are not ready to accept him and have indicated that they will be forced to relocate if accused is released on bond
12. The accused herein is a minor aged 16 years who from the pre-bail report is likely to be harmed in view of hostility existing at the moment. In my view it would be in the interest of the accused to be remanded in a facility for children for his own protection and also to protect his family.

Final Orders:

- 1. Application for bond/bail is declined
- 2. Accused my renew bond application at a later date

RULING DELIVERED, DATED AND SIGNED VIRTUALLY 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.

No appearance for accused.

